United States Court of Appeals

for the Second Circuit

APPENDIX

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In the

UNITED STATES COURT OF APPEALS
For the Second Circuit

NATIONAL ASSOCIATION OF INDEPENDENT TELEVISION PRODUCERS AND DISTRIBUTORS (No. 75-4021); WARNER BROS. INC., COLUMBIA PICTURES INDUSTRIES, INC., MGM TELEVISION, UNITED ARTISTS CORPORATION, MCA, INC. and TWENTIETH CENTURY FOX (No. 75-4024); SANDY FRANK PROGRAM SALES, INC. (No. 75-4025); WESTINGHOUSE BROADCASTING COMPANY, INC. (No. 75-4026),

Petitioners,

-against-

FEDERAL COMMUNICATIONS COMMISSION and the UNITED STATES OF AMERICA,

Respondents,

NATIONAL BROADCASTING COMPANY, INC., et al.,

Intervenors.

APPENDIX OF WARNER BROS. INC., COLUMBIA PICTURES INC., MGM TELEVISION, UNITED ARTISTS CORPORATION, MCA INC., TWENTIETH CENTURY-FOX TELEVISION, NATIONAL COMMITTEE OF INDEPENDENT TELEVISION PRODUCERS and LORIMAR PRODS.

VOLUME III

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
ATTORNEYS AND COUNSELLORS AT LAW
345 PARK AVENUE, NEW YORK, N.Y. 10022

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APPENDIX OF WARNER BROS. INC., COLUMBIA PICTURES INC., MGM TELEVISION, UNITED ARTISTS CORPORATION,MCA INC., TWENTIETH CENTURY-FOX TELEVISION, NATIONAL COMMITTEE OF INDEPENDENT TELEVISION PRODUCERS and LORIMAR PRODS.

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* These materials, while not in the official record, may be helpful to the Court. The Daily Variety and Broadcasting articles and the Coleman and Company Report are referred to in the Commission's January 17, 1975 Report and Order (¶23 & n. 22; p. C-11 n. 7). The 1975 Tucker Anthony Report is the most recent version of the Tucker Anthony Report referred to in the Commission's Report (p. C-11 n. 7).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of Consideration of the operation of, and possible changes in, the prime time access rule, Section 73.658(k) of the Commission's Rules.	)))))))	Docket No. 19622

COMMENTS OF WARNER BROS. INC., UNITED ARTISTS CORPORATION AND MGM TELEVISION IN RESPONSE TO FURTHER NOTICE

September 20, 1974

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of Consideration of the operation of, and possible changes in, the prime time access rule, Section 73.658(k) of the Commission's Rules.	)	Docket No. 19622

COMMENTS OF WARNER BROS. INC., UNITED ARTISTS CORPORATION AND MGM TELEVISION IN RESPONSE TO FURTHER NOTICE

Warner Bros. Inc. (Warner), United Artists Corporation (UA) and MGM Television (MGM) submit these comments in response to the Commission's Further Notice following the recent decision of the United States Court of Appeals for the Second Circuit staying the modified prime-time access rule (PTAR) for one year.* While postponing a formal decision on the merits of the Commission's action in modifying rather than repealing PTAR, the Court raised serious questions about the rule and strongly urged the Commission to "reconsider" it. The legal standards stressed

* NAITPD v. FCC, ___ F.2d ___ (June 18, 1974).

by the Court, the record before the Commission when it issued its February 1974 Report and Order (44 FCC 2d 1081), and subsequent events reinforce the conclusion that PTAR should now be repealed and not merely given cosmetic changes.

PTAR has admittedly frustrated its twin public-interest goals by decreasing program diversity and increasing network dominance. The Commission itself acknowledges that PTAR has created "the present reality of a deteriorating diversity in programming."* And its Economist has found that "overall network power has been strengthened, not weakened, by the prime-time access rule".**

In addition, PTAR produced other injurious side-effects. It has led to a doubling of commercials and an increase in "hidden plugs" in the early evening children's hour; to an under-representation of women and minority groups in both program

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* FCC Brief in <u>NAITPD</u> v. <u>FCC</u>, p. 18.

** "The Economic Consequences of the Federal Communications Commission's Prime-Time Access Rule on the Broadcasting and Program Production Industries" by Dr. Alan Pearce, September 1973 (hereafter referred to as the "Pearce Report"), p. 1.

content and employment; to artificial discrimination against domestic programs in favor of foreign shows; and to unemployment in the American production industry and a stifling of American creative talent.

In light of PTAR's disastrous record, the Commission concluded that continuation of the original rule was contrary to its public-interest mandate. But as a compromise among competing interests, the Commission decided to continue the experimental rule in a modified form. However, those modifications solve neither PTAR's fundamental defects nor the problems it has caused. Indeed, they create additional First Amendment and public-interest problems.* The PTAR experiment should be ended after four unfortunate television seasons. The public can no longer be the guinea pig for a rule that does not work. And the rule's laudable goals -- more program diversity and less network dominance -- should be sought and achieved by different and viable Constitutional means.

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* The modified rule's sweeping ban of all motion pictures and its off-network restrictions and program classifications are discussed in Points V and VI, *infra*.

I

PTAR HAS FRUSTRATED ITS GOAL
OF INCREASING PROGRAM DIVERSITY

The Court made it crystal clear that continuation of PTAR is now open to serious question. It thus went out of its way to stress that in Mt. Mansfield Television, Inc. v. FCC, 422 F.2d 47 (2d Cir. 1971), "we recognized the experimental nature of the rule and warned that our holding did not preclude a further review of experience with the rule if it proved to be inimical to the public interest" (4260).* The Court also emphasized that the Commission had not given sufficient consideration to the rule's impact on the viewing public. It proclaimed that "the Commission must place the public interest above private interests" because PTAR "directly affects what millions of Americans watch on television for an hour every night and, indirectly, may affect all prime time programming" (4271); and that the Commission "may not simply compromise between the interests of different broadcasting groups and gloss over the more fundamental public interest" (4272).

Tested by that cardinal principle -- namely, by PTAR's impact on "what millions of Americans watch on television for an hour every night" -- the rule must be repealed.

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* References in parenthesis are to the slip opinion.

For nobody -- not even the rule's most vociferous supporters -- attempts to defend its program record. Westinghouse, for example, conceded at last summer's hearings: "Did we accomplish more diversity in programs? No, we did not and that is one of the great jeopardies the rule has at the moment" (Tr. 486).

The Commission itself candidly told the Court that millions of Americans are now faced with "the present reality of a deteriorating diversity in programming" and that "the disappointing fact is that this [PTAR] has not resulted in diversity of program choices to the public."*

In its Report and Order, the Commission found that access programs raised "grounds for concern" and could hardly be regarded as "favorable" or "distinguished"; that the rule provided "singularly little in the way of opportunity for the development of really new syndicated material"; that it was of "very little benefit . . . to the cause of promoting really new non-game programming."**

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* Commission Brief, pp. 18, 25.

** 44 FCC 2d 1081, 1132, 1134, 1137-38.

The actual figures present a considerably more alarming picture. They show that since its adoption, PTAR has caused a dramatic decrease in diversity of choice for viewers of access entertainment programming.*

	1970-71	1971-72	1972-73	1973-74	1974-75
Game Shows	11%	23%	49%	55%	66%
Dramas	46	28	17	12	5
Comedies	22	19	2	7	0.5

Thus, game shows have increased five-fold at the expense of varied dramatic and comedy programs, thereby substantially narrowing viewers' choices. Indeed, many stations "strip" game shows in access time (present them every week night); other access game shows are nothing more than the sixth or seventh versions of game shows already being "stripped" on daytime network television; <u>and in some markets, viewers' options are limited exclusively or primarily to game shows because all or most stations telecast them simultaneously</u>.**

In its February 1974 Report and Order, the Commission also found that PTAR has led to the artificial stimulation of inexpensive foreign programs at the expense of domestic

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* These figures, measuring access time devoted to syndicated programming, are based on the February 1974 Report and Order (44 FCC 2d 1081, 1153), for the 1970-71 through 1973-74 seasons and on recently-announced station schedules for the new 1974-75 season. These figures, as well as additional data, are contained in Table II of the Joint Appendix of Warner, MCA, Columbia, MGM, UA and Twentieth Century-Fox submitted herewith. References to the Joint Appendix are hereinafter indicated as "JA".

** 44 FCC 2d 1081, 1132-33, 1138, 1152-56.

production.* This season, more than 85% of the small amount of dramatic programming left in the access period is made abroad. These foreign shows, as the Commission recognized, exacerbate the employment depression in the American production industry and are void of social themes germane to American minorities and deprive them of employment.**

To the extent that access time contains any comedy or dramatic material, it is rapidly disappearing. Thus, the six non-game shows which the Commission's 1972 Notice of Rule Making cited as "truly innovative,"*** and the two specially mentioned in its 1974 Report**** have all been abandoned (JA Table VI). Diversified dramatic and comedy material -- even when attempted at substantially lower budgets than network-calibre programs -- simply cannot survive in competition with game shows and other cheap access programs in the economic climate of the first-run access syndication market.*****

In addition to eroding program diversity in access time periods, PTAR, according to the Commission, has caused

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* 44 FCC 2d 1081, 1138-39, 1154.

** 44 FCC 2d 1081, 1138.

*** 37 FCC 2d 900, 903 (1972).

**** 44 FCC 2d 1081, 1138.

***** See Pearce Report, pp. 69, 127.

the networks -- with shorter schedules -- to decrease public affairs programs, documentaries and children's programs in prime time.* Prior to PTAR, two networks offered one hour of regular public affairs programs each week. This season no regular network public affairs shows remain in prime time.

The degradation of programming found in the Commission's February Report has grown steadily worse in the passing months:

(1) Schedules for the current season (1974-75) reveal a further drastic deterioration in program diversity. Thus, game shows will now monopolize an astonishing 66% of all access entertainment time, while varied dramatic and comedy material will decline further to 5% and .5%, respectively (JA Table II). This year, the top four access shows and seven of the top ten are games (JA Table VIII). Viewers' options are thus growing narrower each day PTAR remains in effect.

(2) There has also been a recent alarming increase in stripped day-time network games shows, many of which will spawn additional and repetitive episodes for access time.** Last season, three of the leading access game shows were nothing more than extra versions of currently stripped day-time network game shows.*** At least seven will fall into

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* 44 FCC 2d 1081, 1134-35, 1141; Commission Brief, pp. 23, 25; Pearce Report, pp. 8, 42.

** New York Times, July 7, 1974, Sec. 2, p. 1; Broadcasting July 15, 1974, p. 21.

*** "Hollywood Squares," "The Price is Right," "Let's Make A Deal."

that category this season.* Indeed, this season 25% of all access time devoted to syndicated entertainment programming will be filled with sixth and seventh episodes of game shows stripped on network daytime television (JA Table VIII). And, other access game shows will be stripped in the access period. Thus, viewers this season will have even less program diversity than they had just seven months ago when the Commission's Report was issued.

(3) This is true for another reason. The Report singled out two new programs -- "Dusty's Trails" and "Ozzie's Girls" -- as offering some faint hope that perhaps stations would not "always tend to prefer cheaper material, such as inexpensive U.S. game shows . . . or foreign 'off-network' product" (44 FCC 2d 1081, 1138). But both programs -- even though made at relatively low budgets -- have disappeared, unable to survive the game show blitz (JA Table VI).

(4) Restoration of the original PTAR for a year has also caused the networks to cancel brand new prime-time series of documentaries, public affairs programs and children's specials on Saturday nights, plus six half-hours of weekly diversified family entertainment of network quality.** In

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* "Hollywood Squares," "The Price Is Right," "Let's Make A Deal," "Name That Tune," "$25,000 Pyramid," "Jeopardy," "Celebrity Sweepstakes." See JA Table VIII.

** The return to the old rule for one final year caused "the forced cancellation -- or rescheduling where possible -- of perhaps 65 hours of news and children's specials booked by the networks for early Saturday evenings in the coming season." TV Guide, July 6, 1974, p. 12.

short, television programming is growing worse for millions of Americans because of PTAR.

The nation's leading television critics and publications have also decried the lack of diversity and inferior quality of access fare.

> ". . . The rule has been a cultural disaster." (The Washington Post, 7/14/74)

* * *

> "That slot [access time] has been monopolized by inane game shows and penny-budget disasters." (N.Y. Times, 9/14/72)

* * *

> "Instead of promoting original programming, it [PTAR] has sent the local station managers scurrying to producers who imitate hits of the past." (Time, 2/5/73)

* * *

> "A season and a half later, the rule has become a regulatory quagmire, almost wholly counterproductive as a creative stimulant, highly discriminatory in its industry impact, and hopelessly inflexible as a guideline." (TV Guide, 1/27/73)

* * *

> "'Hee Haw.' "What's My Line?' "This Is Your Life.' "Lawrence Welk.' "To Tell The Truth.' That sounds like a list of television hits of yesteryear. It is. It is also a list of television hits of today, thanks to (some say by order of) the Federal Communications Commission." (Wall Street Journal, 11/24/72)

* * *

"This publication believes that the FCC should never have gotten into an access rule in the first place." (Broadcasting, 7/15/74),

The proliferation of game shows on network daytime and local station access time has recently been the subject of detailed critical articles in The New York Times, July 7, 1974 (Sec. 2, p. 1) and TV Guide, August 10, 1974 (pp. 16-18, 20, 22). In essence, they conclude that the "glut" of game shows are caused by various factors -- they are the cheapest form of programming, carry the greatest numbers of commercials and hidden product plugs and are very profitable. The TV Guide critique included an editorial, which states in part:

"Speaking of Let's Make a Deal, The Price Is Right, and his own New Treasure Hunt, Barris says: 'These shows bring out the worst in human beings, and reduce them to a state that isn't very attractive to see. We make a strong appeal to the greed in them. They agonize, they cry, they hyperventilate. And we show all that. . . . It doesn't bother me that we show it, because I'm hypocritical and greedy enough myself to want to make money out of it. If I felt strongly enough about it -- which I don't -- I'd take my shows off the air.' Then he added, grinning: 'Somebody recently called me The King of Slob Culture.'

"Mr. Barris comes by his title honestly, for he is also the man who gave us The Newlywed Game and The Dating Game and it is sometimes difficult to decide which of these shows is slobbier than the other. But many of us are convinced that, in their weekly multimillion contact with the American public,

> both do a steadily efficient job of cheapening our values, coarsening our mores and accustoming our young audiences to a kind of official tawdriness of social behavior. For bluntness, honesty and lack of a sense of social responsibility, Mr. Barris rates 100 per cent.
>
> "To the network executives who allow Mr. Barris and what he stands for to become such a prominent element of telecasting, we'd suggest that they re-examine the responsibility they hold to entertain and inform the American people. We believe that responsibility also includes an obligation to preserve taste and prevent further degradation of the culture that is currently so vulnerable to their marvelous instrument."

In short, if one judges PTAR by the Court's fundamental test -- namely its impact on "what millions of Americans watch on television" (4271) -- then it is clearly contrary to the public interest. This, we submit, gives special meaning to the Court's admonition that "we recognized the experimental nature of the rule [in Mt. Mansfield] and warned that our holding did not preclude a further review of experience with the rule if it proved to be inimical to the public interest" (4260).

II

PTAR HAS FRUSTRATED ITS GOAL OF DECREASING NETWORK DOMINANCE.

In addition to decreasing program diversity, PTAR frustrated its other objective -- it increased network dominance. The Court strongly criticized the Commission for

failing to consider adequately that crucial question (4268-70). As a result, the Commission's present Notice (¶ 6) asks "whether the justification for the rule in 1970-71 -- as a means to lessen network domination -- is valid in practice."

That question is best answered by the networks' own behavior. In 1970, all three originally opposed PTAR. ABC dropped its opposition to PTAR on reconsideration of the original Report and Order adopting the rule and supported PTAR throughout the current proceedings. NBC, which filed one of the petitions for rule-making seeking repeal of PTAR in 1972, switched its position at the hearings in July 1973. By then, NBC stated that "we are not as offended by the rule as we used to be." (Tr. 376-77). And CBS supported the modified PTAR rule in Court last spring.

As demonstrated in prior comments,* PTAR, by shrinking the network schedules in prime time, created an artificial scarcity, thereby increasing the networks' leverage over local stations, advertisers and independent producers. Moreover, in access time the networks in effect control the creation of programs for the entire nation because each owns five stations in the largest markets which are vital to access producers.

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* See, e.g., Warner's Principal Comments (pp. 24-26) and Reply Comments (pp. 13-17).

Those conclusions are confirmed in the detailed Report of the Commission's Communication's Economist, based upon voluminous statistics and interviews with more than 170 executives throughout the industry. He concluded:

> "Overall network power has been strengthened, not weakened, by the prime-time access rule. Network originated programming has become scarce, resulting in greater advertiser demand for commercial minutes. . . . It has, in addition, strengthened the networks' bargaining position with program producers, who are now required to compete for fewer prime-time network hours. (pp. 1-2)
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> * * *
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> "The five owned and operated stations that belong to each of the three networks are in a potentially better financial position as a result of the prime-time access rule. . . . Moreover, it is important to note that a program stands little chance of being successful in syndication unless the networks' five owned and operated stations buy it. The networks and their owned and operated stations, therefore, have a great deal of financial power over those programmers producing for the prime-time access periods, and thus over the total choice of programming available for access time on other stations. (pp. 3-4)
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> * * *
>
> "Networks control over the program production industry was strengthened, not weakened, by the prime-time access rule in a very important respect. The networks' bargaining position with Hollywood program production houses was strengthened because the market for expensive television programming had been reduced by roughly 16 percent without any commensurate reduction in the number of production houses. . . . (p. 38)
>
> * * *

"Apparently advertisers have more money to spend than the networks have time to sell, causing the price to go up. This scarcity of advertising time was a direct result of the prime-time access rule. (p. 41)

* * *

"In summary, the networks have not been hurt financially at all by the prime-time access rule, nor has their power diminished. An almost immediate result of the rule was the improvement of bottom line profit figures. (p. 45)

* * *

"As a result, the networks would probably show no great disappointment if the rule were retained; they lost some marginal programming, and gained in revenues and profits." (p. 45)

The Network Station Groups Influence the Nation's Access Programming

The present Notice asks for corroboration of the findings of its Economist. Thus, it inquires about "the extent to which the network-owned stations buy syndicated programs as a group and [whether] such sale is necessary to a program's success." (¶ 6) That question has been answered uniformly by the leading access producers themselves:

(1) NAITP has stated:*

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* Petition for Stay in Court of Appeals, February 28, 1974, p. 14.

"[T]he primary sale for any new [access] show is to network owned and operated stations (O & O's), which account for almost half of the expected gross revenue of an access show. In effect, they underwrite the costs, and profits do not even begin until some time later."

(2) Metromedia has stated that "an advertiser will not be interested in contracting for a program unless he is assured of coverage of the major markets"; that this creates "the necessity for contracting with a group of network owned-and-operated stations for coverage in the nation's three largest cities"; and that thus "there must first be a network O & O group deal, and this must be followed by concentrated sales activities in stations throughout the country."*

(3) Filmways has said:

"Normally sale to network owned and operated stations, which are located in the largest markets, represents the principal financial support for first run syndication program material, generally about 50% of gross revenues. . . ."**

(4) Time-Life has stated:

"As is detailed in the February 18, 1974 issue of 'Broadcasting' (page 27), it is very important to the sale success of any syndicated series for a syndicator to be able to sell his product to one of the major market stations, preferably one of the network-owned and operated stations."***

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* Principal comments, Appendix V, p. 2.

** NAITPD Petition for a Stay in Court of Appeals, February 28, 1974, Appendix L. Also see statement of Firestone, Appendix J.

*** Time-Life Comments in Support of NAITPD's Petition for a Stay before the Commission, February 21, 1974, p. 6, n. 5.

(5) Twentieth-Century Fox testified at the hearings that although it was among the most active distributors of access programs (with four different foreign-produced shows last season), it never proceeded without an advance commitment from a network O & O group (Tr. 162-68).

Similarly, a recent article in Broadcasting states:*

> "The most successful of prime-access series nationally tend also to be the ones that show up most frequently on stations owned by the networks . . . It's not because network O & O's pick only the best. It's because (generally speaking) few access shows can make it (economically) in the rest of the country if they can't first land the major dollars of the network powerhouses."

Those statements support the conclusion of the Commission's Communications Economist that "a program stands little chance of being successful in syndication unless the networks' five owned and operated stations buy it" (pp. 3-4).

PTAR Has Increased Network Dominance in Prime Time

The present Notice (¶ 6) also seeks corroboration of the increased network power in prime time over stations, advertisers and independent producers caused by PTAR's shrinkage of the already tight network prime-time market.

(1) Stations: The answer to the Notice's question (¶ 6) as to whether PTAR caused a decrease in preemptions is,

* July 15, 1974, pp. 22-26.

once aga.n, provided by PTAR's proponents. Thus, ABC predicted in 1970 that "higher clearance levels . . . can be expected" and that the rule "may offer the benefits of option time."* Three years later, it acknowledged that PTAR had in fact led to "better clearances."** Peninsula, an ABC affiliate, stated in its comments that it and affiliates of the other networks had virtually ended preemptions since PTAR (pp. 21-3).***

(2) Producers and advertisers: The Notice (¶ 6) also asks for corroboration of the findings of the Commission's Economist that PTAR, by creating an artificial scarcity of network prime-time, increased the networks ability to raise prices to advertisers and, at the same time, depress prices to independent producers of programs used by those advertisers.

The facts, once again, are not in dispute. Since 1970, the average cost of a network prime time minute has increased about 50% -- from approximately $50,000 to $75,000 -- a vastly steeper rate of increase than in prior periods.****

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* ABC's Petition for Reconsideration, June 12, 1970, p. 6.

** ABC's Principal Comments, January 15, 1974, p. 18.

*** Variety also reported that all "the networks are getting better clearances for every program in prime time than they did before the access rule." February 7, 1973, p. 56.

**** The data from A. C. Nielsen, CPM Analysis, November, shows the following average cost of a network prime time minute: 1967 - $45,700; 1968 - $47,200; 1969 - $49,600; 1970 - $50,000; 1971 - $55,000; 1972 - $69,900; 1973 - $68,900. The 1974 figure of $75,000 in the text is an estimate for the fourth quarter based on sources believed to be reliable.

At the same time, the average standard license fees received by independent suppliers of network series have increased by only about 10%.

Financial analysts and trade papers also agree with the conclusion of the Commission's Economist that PTAR has created an artificial scarcity beneficial to the networks.* One market analyst, recently recommending purchase of network securities, listed PTAR as the number one reason for the bright network profit picture: "When 14% of the available prime time was eliminated, the networks found themselves with a much higher percentage of their inventory sought after, and conversely far fewer marginal programs to sell."** This has led to "firmer" advertising rates and has "helped the rate structure of all three networks." The analyst concludes that "as long as the prime time access rule stays as it is,"*** this favorable network prime time market will continue.

Available financial data confirms this conclusion. Although PTAR reduced network schedules substantially, network broadcast income has increased astronomically, from $53.7 million in 1971 to nearly $185 million in 1973,

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* See, e.g., Coleman and Company: "Broadcasting Industry: Midyear Review and Outlook," July 1974, p. 6; Forbes, February 1, 1973, p. 50; Report of Tucker, Anthony & R. L. Day. "The Broadcaster and the Prime Time Access Rule," June 24, 1973; Broadcasting, July 15, pp. 21, 27-28.

** Coleman and Company, supra, p. 6

*** Ibid.

or approximately 230%.* In short, the networks have enjoyed record profits since the adoption of PTAR.

On the other hand, as shown above, the prices paid by the networks to independent program producers have lagged far behind increased advertising rates and network profits. Indeed, as shown in the Pearce Report (pp. 110-16), most producers are forced to deficit-finance new programs and to give long re-run options. PTAR aggravates the price-squeeze by shrinking prime-time slots, thereby increasing network leverage.

The networks, moreover, have intensified this leverage still further by increasing internal production of their own entertainment programs -- an increase that ABC predicted would be the result of PTAR's companion "financial interest" rule prohibiting the networks from extracting interests in programs of independent producers.** Last season, for example, ABC and CBS filled substantial portions of their respective needs for movies-of-the-week with internally-produced product and licensed the rest at below cost from independent producers.***

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* FCC, TV Broadcast Financial Data - 1973; August 28, 1974; FCC, TV Broadcast Financial Data - 1972; August 22, 1973.

** In 1970, ABC told the Commission that the financial interest rule "will almost inevitably lead the network companies to greater amounts of in-house production, and consequently to less reliance upon independent producers." ABC Petition for Reconsideration, June 12, 1970, p. 73.

*** Pearce Report, pp. 110-117; Appendix IIA, IIB.

PTAR has also artificially increased syndicated program costs, a burden which falls heavily on independent and U.H.F. stations. Because the rule has not stimulated new syndicated product to meet the increased demand, and because shortened network schedules have decreased the amount of programming flowing to independent stations after their network runs, program costs have risen steeply.* This price squeeze will hurt all U.H.F. and independent stations.

In short, contrary to its principal objective, PTAR has increased network dominance. If the Commission really wishes to tackle the network problem, it must do so by pursuing alternative solutions, including, for example, those that have been recommended by the Justice Department, former Chairman Burch, former Commissioner Johnson, its Economist and other experts.**

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* Coleman and Company, _supra_, p. 10.

** See, for example, dissent by then Chairman Burch to original adoption of PTAR in May 1970 (23 FCC 2d 411) and his separate statement in connection with the Current Report and Order; separate opinion of then-Commissioner Johnson in October 1972, concurring in part and dissenting in part, in connection with the prior Notice of Rule Making (37 FCC 2d 925); Pearce Report. _Cf._ _Columbia Broadcasting System_ v. _Democratic National Committee_, 412 U.S. 94, 131 (1973).

III

PTAR HAS INJURED THE DOMESTIC PRODUCTION INDUSTRY.

The present Notice (¶¶9-10) solicits data as to PTAR's impact on the domestic production industry and its unemployment problems. These are serious matters for Commission concern because the production industry supplies stations and networks with most of their programming. Indeed, PTAR was passed to promote the industry's health. But it has had the opposite effect. In addition to enhancing the network leverage over independent suppliers it was intended to dilute, PTAR has injured the production industry in other ways--which explains why producers have opposed the rule in filings before the Commission by an almost 10-to-1 margin.

Foreign Production: The Notice (¶10) inquires about "the extent to which use of foreign-produced material is increased under the rule (original or revised) and the impact of any such increase on U.S. production activity and employment." The Commission itself found a substantial increase in the amount of syndicated entertainment access time devoted to foreign-produced material and that "the increased use of foreign product. . .cannot be regarded as a favorable result of the rule, since it means less use

of U.S. material (and thus U.S. production activity and employment)."*

<u>Loss of Network Production</u>: PTAR's reduction of network schedules has also caused substantial injury to domestic production activities and employment. Prior to PTAR, the three networks programmed 75 hours in prime time each week; the original and modified rules cause reductions of 12 and 9 hours, respectively, each week.** This displacement of network-calibre programming with inexpensive access fare meant, in 1972 alone, a loss of $60,000,000 per year under PTAR according to NBC.*** That figure has since increased. The Commission's Economist**** also found that PTAR, on balance, had caused a substantial decline in production, expenditures and employment. Voluminous supporting data has been furnished in these proceedings by the various guilds and unions representing thousands of skilled production workers adversely affected by the rule.

<u>Local Programs</u>: The Notice (¶10) also inquires about the "number of persons involved in local program

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* 44 F.C.C. 2d 1081, 1138, 1154.

** The loss under the modified rules would be 7-1/2 hours if each network uses one-half hour per week for public affairs, documentaries and children's specials.

*** NBC original Principal Comments, January 15, 1973, p. 3.

**** Pearce Report, pp. 97-98, 122-25.

production to the extent locally produced programming is increased under the original and revised rule." But the increase of local programming in access time is de minimus*--certainly dwarfed by even a single game show. Moreover, many local shows in access time would have been presented then anyway, are not related to PTAR, or reflect a rescheduling of such material from other time periods.** Perhaps the best evidence of PTAR's inability to encourage local programming is the experience this year following the Second Circuit's stay of the modified rule. Instead of filling that newly opened time with local programming, the stations simply turned to more games than ever before to fill the access slot.***

* * *

The Notice (¶8) also solicits general comments as to PTAR's impact on competition among "producers and distributors of programs and types of programs." PTAR has drastically decreased such competition and created an artificial, competition-free enclave for game show entrepreneurs and importers of cheap foreign programming. Producers of network-calibre programs ($100,000 to $150,000 per half-hour episode) cannot sell their programs in the so-called first-run access syndication market

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* See Pearce Report, pp. 66-67, 122; Warner's original principal comments (pp. 13-15) and reply comments (pp. 17-20).

** Pearce Report, pp. 66-67, 122.

*** Last season (1973-74) local non-news programming filled a meager 7% of access time, 44 FCC 2d 1081, 1153. This season, that figure remains unchanged (JA Table I).

because of its limited economic base. And those few producers who attempted access dramatic and comedy material at lower budgets ($40,000 to $80,000) found that they could not compete against game shows ($5,000 to $10,000) and other inexpensive access fare. Thus, instead of fostering competition, PTAR created a protected haven for producers of cheap programs.

Nor did PTAR, as originally anticipated, attract new entrants. The Commission's Economist stated: "I don't know of a single company that has gone into business as a result of the rule."* The leading access shows all come from established producers.** Ironically, the principal effect of PTAR has been to concentrate production in fewer and fewer hands. Thus, last season (1973-74) and this season three producers controlled approximately 45% of all access syndicated entertainment time--an unprecedented degree of concentration.*** These results of PTAR are in stark contrast to the Commission's determination not to "carve out a competition-free enclave for syndicators nor to smooth their path nor promote the production of any particular type of program" (44 FCC 2d 1081, 1087).

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* TV Guide, January 27, 1973, p. 3.

** Pearce Report, p. 5; JA Table VIII; and see Warner's Original Principal Comments, pp. 18-19, and chart following page 7 thereof.

*** The three producers in the 1973-74 season were Goodson-Todman (games, 27%), Ralph Edwards (games, 10.4%), and Heatter-Quigley (games, 6.4%). See "Further Supplemental Joint Appendix" 9/12/73, Table IV. This year, the producers are: Goodson-Todman (games, 22.1%); Ralph Edwards (games, 15.2%) and Hatos-Hall (games, 7.8%), JA Table VIII.

IV

PTAR HAS INJURED THE PARTICULAR GROUPS MENTIONED BY THE COURT.

In addition to decreasing program diversity and increasing network dominance, PTAR has also injured the special groups mentioned in the Court's opinion and in the Commission's present Notice.

(1) Playwrights, actors, musicians and production craftsmen have surely been harmed by a rule that has caused a five-fold increase in game shows; a demise of dramatic and comedy material in the early evening hours; a disappearance of regular public affairs and similar programs on network prime time; a reduction in new quality production for network prime time; and restrictions on off-network programs and motion pictures. Thus, the record reflects opposition to PTAR by the nation's leading creative talent, including those represented by the Authors League of America, the National Committee of Independent Television Producers and the various guilds. And the comments and statistical data recently filed by the Screen Actors Guild, the Hollywood Film Council and The Writers Guild of America West, Inc., underscore the adverse impact PTAR has had on the domestic programming industry.

(2) Consumer groups--all viewers and particularly children--have surely been injured by a rule that has lead to a doubling of commercials (from 3 to almost 6 minutes per half

hour)* plus an increase in "hidden plugs" in the early evening viewing period. "An average half-hour game show may have more than two minutes of plug-time in addition to the normal commercial load of six minutes. . .[T]here are more 'commercials' on game shows than on any other type of program." (The New York Times, July 7, 1974, Sec. 2, pp. 1, 15).

(3) PTAR has also failed to serve the needs of the nation's minority groups and women. 66% of access entertainment time is filled by game shows--yet they do not have a single woman or black emcee. In this connection, one game show producer has candidly admitted that the chances of seeing a black game show host are remote. Apparently, a game show host has to be both "'affirmative and inoffensive'" and "under this theory, a black man might be perceived as stern by enough people to give a potential sponsor the willies."** This is what happens to blacks on 66% of access entertainment time. Nor are minority needs and interests met by foreign-made programs that do not deal with social themes relevant to American ethnic groups or provide employment for them.***

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* That is established by a BAR study described in Warner's original principal comments (p. 15). PTAR's proponents did not question that study and, in fact, conceded that PTAR had caused increased commercialization.

** Broadcasting, Sept. 9, 1974, p. 52.

*** 44 FCC 2d 1081, 1138. For a comment on PTAR's adverse impact on blacks, see "Prime Time Access Exists?" in Black Enterprise, Sept. 1974.

Syndicated programs made for access periods have totally neglected the interests of blacks and other minority groups. While the Commission's Report points to "Black Omnibus" as the sole encouraging sign, that show was not produced for PTAR. It played in access time in only one market in 1972-73 and none in 1973-74. The program, only 13 episodes of which were ever made, has been abandoned because, we are informed, advertisers were reluctant to support a syndicated program geared to black audiences. Stations have taken the view that "do-gooder shows have failed miserably" in access time.* In contrast, the networks over the last several years have substantially increased entertainment programming with minority actors in leading and important supporting roles; public affairs programs dealing with minority issues; and outstanding feature films about ethnic groups such as "The Autobiography of Miss Jean Pittman."

PTAR has produced little local programming of any type at all. According to the Pearce Report, only about 4% of total available access time is filled by local shows not in existence prior to PTAR (p. 67; App. III). He concludes (pp. 66-67):

> "To date, there has not been a great impact from locally produced public affairs programs.

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* The Wall Street Journal, November 24, 1972, p. 1.

* * *

> "There are. . .considerable disincentives to producing such local public affairs, while there are considerable incentives to buy cheap game shows with high viewer appeal and high revenue and profit potential."

If the Commission wants to encourage the presentation of local programs for minority and other community groups, it should seek a direct and effective approach--tailored specifically to that need--and one that does not, at the same time, inflict on children and other early evening viewers 66% games, double commercials and a "deteriorating diversity."

V

THE MOVIE AND OFF-NETWORK BAN SHOULD BE REPEALED.

While not specifically addressed to the motion-picture or off-network provisions of PTAR, the present Notice does solicit general comments about PTAR's impact on production activities and competition between program types and producers. We therefore wish to make brief comments about these restrictions.

The Motion Picture Ban*

Although the Commission intended to relax the original

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* The petition filed by United Artists for reconsideration of the modified rule's motion picture restrictions is incorporated herein by reference.

rule prohibiting access use of feature films televised within two years in the market by allowing the use of all movies at 7:00-7:30 PM,* its proposed total ban of all feature films at 7:30-8 PM is really totally counter-productive. The half-hour relaxation is illusory in practice. There will, in fact, be a virtual blackout from 5 to 11 PM or later.** This will certainly adversely "affect what millions of Americans watch on television" (4271). Feature films are an extremely diverse and popular form of programming. But a large portion of the public misses the network telecasts of even the most outstanding films--whether it be My Fair Lady, A Man For All Seasons or Patton. When will those viewers now have an opportunity to see such films? Motion pictures will be relegated to the morning, the early afternoon or very late at night, when most working people are not at home.

The new total motion picture ban will also increase network dominance and injure independent producers, all contrary to PTAR's objectives. Producers, who could formerly license features to hundreds of local stations plus the three networks, found that the original rule sharply curtailed their market. Syndicated sales of features declined from $94 to $43 million between 1970 and 1973.*** The proposed total ban will aggravate that problem and place independent

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* 44 F.C.C. 2d 1081, 108[illegible], 1135-36.

** Stations cannot start feature films at 5 PM because they would run into the usual 6-7 PM news period. While the modified rule would allow movies in the subsequent 7-7:30 time slot, a station could not start a feature then because it would run into the 7:30-8 prohibited zone. Nor, as a practical matter, will stations schedule movies at 8 PM because they would preempt the bulk of the networks' reduced prime-time schedules.

*** Data supplied by MPAA.

producers at a further disadvantage in dealing with the networks.

It is ironic that motion pictures should be singled out for such arbitrary treatment because they are ideal in terms of PTAR's original objectives. They are innovative, diverse and created independently of the networks. Indeed, as the Commission has repeatedly recognized, motion picture producers are an important, independent source of programming for the entire television industry and supply both stations and networks with a substantial amount of creative, varied and popular programming. And although the Commission has stressed the public interest importance of a healthy production industry, its new movie ban can only further depress the syndication of features to local stations, thereby drying up an important source of income for the industry.

The Off-Network Ban

The modified rule eliminates the "off-network" ban from 7-7:30 PM because the Commission found that stations' use of that time "represents singularly little in the way of opportunity for the development of really new syndicated material" (44 F.C.C. 2d 1081, 1132). Yet, the Commission inexplicably proposes to continue the off-network ban from 7:30-8 even though that time period is also devoid of "new material," and dominated by the same access fare as the prior half-hour period.

Experience, moreover, reveals the highly artificial nature of the entire "off-network" concept. While prohibiting the telecast of a particular episode of a series if that episode had previous network exposure, no matter how outstanding it may have been, PTAR encourages the replication of the cheapest types of old network shows plus additional episodes of current stripped network game shows. And it also encourages the heavy use of foreign off-network programs.*

Independent producers deficit-finance programs for the networks, and must rely upon the syndication market just to recover costs. By curtailing a substantial portion of this vital market, PTAR actively discourages risk investment in new programs.

The Commission recognized in the 1972 Notice of Rule Making that "it is questionable whether the [off-network] rule if literally applied would serve the public interest"; that the rule is a "bar on the presentation of some highly worthwhile material"; and that the off-network ban does not represent "the objective of the rule to lessen network control of television programming." (37 F.C.C. 2d 900, ¶¶12, 38). Subsequent experience reinforces the conclusion that the ban should be repealed.

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* Pearce Report, p. 131. PTAR also allows unlimited repeats of access programs.

VI

PTAR VIOLATES THE FIRST AMENDMENT

Although the Notice does not call for comments on this issue, the Court emphasized that the validity of PTAR under the First Amendment was an open question despite its prior ruling in Mt. Mansfield (4260). We shall therefore refer briefly to the respects in which PTAR infringes basic First Amendment rights:*

(1) PTAR has forced on viewers, in the FCC's own words, the "reality of a deteriorating diversity in programming."** But under the First Amendment, the public is entitled to the widest choice of programs and ideas, not to "a deteriorating diversity." Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969); Associated Press v. United States, 326 U.S. 1 (1945); Mt. Mansfield Television, Inc. v. FCC, 442 F.2d 470 (2d Cir. 1971).

(2) Although the Commission did not pass a rule specifying that 66% of access time shall be occupied by game shows (or foreign imports or cheap copies of ancient network formats), it created an economic structure which had and will continue to have the same "chilling effect."

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* For the sake of brevity, we incorporate herein by reference Warner's Briefs in NAITPD v. FCC.

** FCC Brief, p. 18.

(3) Feature motion pictures -- diverse and innovative -- are suppressed in access time although they constitute an important art form entitled to full First Amendment protection, Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495 (1952). The total ban of an entire class of protected speech -- merely because it happens to be in the form of a motion picture -- is a wholly unprecedented form of direct censorship of program content. A rule that bans 1776 and Patton and encourages Bowling for Dollars defies any conceivable public-interest or constitutional rationale.

(4) Popular programs with prior network exposure (even when independently produced) are banished from access time periods, while copies of old network shows that are the cheapest to duplicate plus additional versions of current "stripped" network shows are encouraged. This is another impermissible intrusion into the sensitive area of program content.

(5) The "off-network" ban is also unconstitutional. It bans from access periods any program once shown on a network, such as Sounder or The Autobiography of Miss Jane Pittman or Lassie, while encouraging replications of the cheapest old network game shows and sixth or seventh episodes of current "stripped" network daytime game shows.

(6) The FCC's recent proposed modifications to the rule do not deal with the foregoing Constitutional infirmities of PTAR and, indeed, create a new bag of additional First Amendment problems. While totally banning feature films, the FCC allows an exception to PTAR one night a week for children's specials (not defined); for a category simply called "public affairs"; for documentaries (defined as "any program which is non-fictional and educational or informational"); and whenever a network devotes all or substantially all of its prime-time to an undefined category of international sports events, football bowl games and "other network programming of a 'special' nature which is neither sports events nor motion pictures." This catalogue of governmentally preferred program types and the accompanying suppression of other broad program types, such as feature films dealing with similar subject matter, is unprecedented and unjustifiable. Moreover, because the preferred program types are cast in such vague general terms, they will inevitably invite individual and subjective program judgments by the FCC every time a party files a request for an interpretation or waiver.

PTAR, original or modified, is fraught with serious intrusions into forbidden programming areas. The basic rule has already deteriorated program diversity in violation of the public's fundamental right to the widest choice of programs and ideas. The rule, whatever its original purported

justification, now surely constitutes an impermissible interference with the First Amendment rights of the public, as well as those of broadcasters and independent producers. Miami Herald Publishing Co. v. Tornillo, 42 U.S.L.W. 5098 (June 25, 1974); Columbia Broadcasting System v. Democratic National Committee, 412 U.S. 94 (1973).

CONCLUSION

Any notion that PTAR needs more testing beyond a fourth season is belied by experience. Stations which can license inexpensive access fare and increase commercials have no incentive to change that lucrative pattern.

Those few producers who tried more diversified and more costly access types of programs -- namely, Westinghouse and NAITPD's founder -- have now abandoned all access production. Other producers who experimented with varied forms of programs -- notably Metromedia, Viacom and Filmways -- have now returned to exclusive concentation on game shows. And producers who originally promised the Commission they would produce varied programming -- namely, Goodson-Todman and Firestone -- never produced anything but more and more game shows.

If Westinghouse, with all of its resources and special

advantages (five stations and extensive production facilities) could not succeed, who can?

Four years is more than enough time for this ill-advised experiment. By now, all parties have surely had more than ample advance notice. We urge repeal of PTAR at the earliest possible time, which the Court has set as September 1975. Injury to the millions of Americans who watch television every night should -- after four years -- be ended.

Respectfully submitted,

PAUL, WEISS, RIFKIND, WHARTON & GARRISON

By Stuart Robinowitz
Stuart Robinowitz

345 Park Avenue
New York, New York 10022

FLY SHUEBRUK BLUME & GAGUINE
45 Rockefeller Plaza
New York, New York 10020

September 20, 1974.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

In the Matter of	)	
	)	
Consideration of the operation	)	
of, and possible changes in,	)	Docket No. 19622
the prime time access rule,	)	
Section 73.658(k) of the	)	
Commission's Rules.	)	

REPLY COMMENTS OF WARNER BROS.
INC., UNITED ARTISTS CORPORATION
AND MGM TELEVISION IN RESPONSE
TO FURTHER NOTICE

October 10, 1974

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REPLY COMMENTS OF WARNER BROS.
INC., UNITED ARTIST CORPORATION
AND MGM TELEVISION

The voluminous comments confirm that four seasons of PTAR have had a disastrous impact on its twin public-interest goals: PTAR has decreased the diversity of program choices for millions of viewers and increased network dominance.

PTAR can no longer be continued on the basis of new compromises, new rationales or new promises. It is time to end the debate and get out of the thicket. We urge repeal for the September 1975 season (the date specified by the Court).

PTAR I, PTAR II or any other permutation represents the deepest and most intolerable intrusion into sensitive First Amendment areas of programming and will lead to endless litigation. If the Commission is now prepared to guarantee fairer local access in broadcasting for ethnic and other community groups -- an important objective wholly unrelated to PTAR -- then it should carefully tailor specific, effective and Constitutional policies, as proposed below, designed to achieve that precise objective.

I

EVERYBODY AGREES THAT PTAR HAS DECREASED DIVERSITY OF PROGRAMS

No one any longer denies that PTAR has decreased the range of program choices of the public in light of the undisputed statistics:*

	1970-71	1971-72	1972-73	1973-74	1974-75
Game shows	11%	23%	49%	55%	66%
Dramas	46	28	17	12	5
Comedies	22	19	2	7	0.5

Other statistics are just as appalling:

-- Over half of the top 50 markets offer viewers two, and in some cases three, competing game show strips every weekday evening during access time.**

-- Access presentation of "extra" episodes of current stripped network daytime game shows constitute 25% of all access entertainment time.***

-- Of the meagre amount of drama left in access time, 85% is produced abroad, with minimal social content relevant to American ethnic groups.****

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* Joint Appendix of Columbia, MCA, MGM, Fox, UA and WB, September 20, 1974 (JA), Table III.

** JA, Table IV.

*** JA, Table VIII.

**** JA, p. 3.

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-- Four producers alone control 52% of all access entertainment time (games).*

-- <u>And only about 1/2 of 1% of all access time (only 11 of the 2100 half-hours in the top 50 markets) is devoted to local programs geared to minority-group audiences</u>.**

The "present reality of a deteriorating diversity in programming" observed by the Commission last April*** has thus grown steadily worse. The present comments and contemporaneous reviews agree with the negative assessments of PTAR's programming that was made by the Commission and by the critics cited in our principal comments (pp. 5-7, 10-12). For example:

> "... There has been a proliferation of game shows which not only fail to serve local needs or increase program diversity, but are actually detrimental to the public interest. Such programs intertwine commercial promotion and program matter and effectively increase commercial content during the access period to far above any acceptable standard" (<u>Consumers Union</u>, Comments, p. 3).

* * *

> "... The rule has not worked as planned but instead has resulted in an abnormal number of game shows and similar type programs with a

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* Goodson-Todman (22.1%); Edwards (14.3%); Hatos-Hall (7.8%); Heater-Quigley (7.3%). See JA, Table VIII.

** See Supplemental Joint Appendix of Columbia, MCA, MGM, Fox, UA and Warner, October 10, 1974 (SJA), Table I, being submitted simultaneously herewith.

*** Brief, <u>NAITPD</u> v. <u>FCC</u>, p. 18.

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resultant deteriorating diversity in programming" (Comments of American Association of Retired Persons and National Retired Teachers Association, representing 7,000,000 persons).

* * *

"... its effect has been precisely the opposite to that which was intended .... [it] limit[s] the amount of diverse, original, and high quality programming available in prime time to the American public" (OTP, Comments).

* * *

"... the kinds of programming that is [sic] occurring in the access period ... is not in line with the hopes of those who previously favored the access rule" (Metromedia, letter to Dr. Pearce, 8/8/74).

* * *

"Did we accomplish more diversity in programs? No, we did not and that is one of the great jeopardies the rule has at the moment" (Westinghouse, Tr. 486).

* * *

"... The FCC was trying to jab the fat-cat operators of local stations across the country to do some useful community-interest programming. They didn't. Instead they bought a lot of game-show revivals, largely junk, from the worst days of TV" (New York Post, 9/19/74).

* * *

"As anyone but the half-dozen game show tycoons who regularly meet in a telephone booth to file petitions will admit, the experiment has been a dismal failure" (Los Angeles Times, 9/20/74).

Thus, "what millions of Americans watch on television ... every night" (Slip op. 4271) has been a "deteriorating diversity in programming". But they are entitled to the

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broadest range of programs and ideas. That is their paramount right under the First Amendment. Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969), and authorities discussed in Point III.

II

THE ACCESS PRODUCERS' EXCUSES HAVE WORN THREADBARE AND CANNOT EXCUSE CONTINUING FIRST AMENDMENT VIOLATIONS

Metromedia now concedes that PTAR "has not resulted in the development of healthy independent program syndication" and that its attempts at access production of non-game shows "were beyond what prudent business judgment probably would or should have dictated" (pp. 3, 7). And Westinghouse admits PTAR has not led to "more diversity in programs" (Tr. 486). Who then are the remaining producers urging a continuation of PTAR?

(1) NAITPD -- Their 13 game shows now fill 55% of all access entertainment time.* NAITPD is a spokesman for Goodson-Todman, which now apparently controls the group,** Firestone and a handful of other entrepreneurs specializing in game shows. The credibility to be accorded to their present promises and excuses for PTAR can be gauged by the past

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* Compare JA, Table VIII, and NAITPD Comments, p. 28, n.26. NAITPD members make only 3 non-game shows. NAITPD Comments, p. 28, n.26.

** NAITPD's Executive Chairman is also the Executive Vice President of Goodson-Todman, whose offices and telephone number NAITPD shares.

record of broken promises. In 1970, both Goodson-Todman and Firestone promised the Commission that they would produce a diversity of high quality programs for access, not just game shows, and the Commission stated that it was relying on those specific promises (25 FCC2d 318, ¶ 10, n.5). Goodson-Todman's and Firestone's letters to then Chairman Burch -- which led the Commission to adopt PTAR -- are attached hereto as Exhibits A and B. But in the ensuing four years, these companies produced and distributed only game shows -- more and more each year. Game shows produced or distributed by these two companies <u>alone</u> now fill almost 25% of all access entertainment time.*

(2) <u>Sandy Frank</u> -- Distributes two game shows produced by other parties (<u>New Name That Tune</u> and <u>New Treasure Hunt</u>), which occupy 6.4% of all access entertainment time.** Frank's comments should be contrasted to the statements of Chuck Barris, who produces Frank's <u>New Treasure Hunt</u>:

> "These shows bring out the worst in human beings, and reduce them to a state that isn't very attractive to see .... It doesn't bother <u>me</u> that we show it, because I'm hypocritical and greedy enough myself to want to make money out of it. If I felt strongly enough about it -- which I don't -- I'd take my shows off the air".***

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* JA, Table VIII.

** JA, Table VIII.

*** <u>TV Guide</u>, 8/10/74, pp. 16-18, 20, 22.

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(3) Viacom -- This CBS spin-off distributes two Goodson-Todman game shows (New Price Is Right and What's My Line) and produces and distributes a third game show ($25,000 Pyramid), which together occupy 10.2% of access entertainment time.* Viacom has now abandoned non-game production for access.

(4) Time-Life -- This late entry, contrary to the impression sought to be created in its comments (p. 2), has only one regular access show (Wild World of Animals), primarily produced abroad and filling only 2.5% of access entertainment time.** It specializes in importing shows made by a foreign network that were not stimulated by PTAR*** or in obtaining waivers from PTAR.****

These four producer-distributor groups who now urge continuation of PTAR -- as opposed to the more than 80 independent producers who have filed comments urging repeal***** -- do not attempt to defend PTAR's program record but offer a variety of excuses for its failure.

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* JA, Table VIII.

** JA, Table VIII. It has two other foreign access shows this season with de minimis access exposure: Other People, Other Places and Life Around Us, which fill 2 and 1 of the 2,100 half-hour access time periods in the top 50 markets.

*** See Exhibits to Time-Life's Motion to Intervene and for a Stay, March 5, 1974, in Second Circuit in NAITPD v. FCC.

**** 35 FCC2d 773 and 43 FCC2d 462.

***** Including NCITP's 75 independent producers -- primarily small creative entities.

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It is claimed that there is a temporary fad for games like football and monopoly that will pass. This hardly merits a reply.

It is also claimed that 7-8 PM audience demographics "prevent the programming of more sophisticated fare" (Viacom, p.5). But have demographics really changed so drastically since 1970, when there were only 11% game shows (not 66%), 46% dramas (not 5%), and 22% comedies (not 0.5%)?

The proponents also claim that things would have been different and better if only there had been more certainty about PTAR's future. But that facile excuse does not withstand analysis upon a review of the four access seasons:

The first access season (1971-72) -- The proponents argue that the first season must be ignored because the off-network and movie rules were not in effect. But there was 77% compliance in the first season with all aspects of the rule even though those two provisions were not yet legally operative.* And producers like Metromedia, Westinghouse and NAITPD's former leader (Winters/Rosen) did make investments in a variety of non-game access shows in the first access season (Primus, Story Theatre, Half of the George Kirby Show, Street People, Norman Corwin Presents, David Frost Revue, On the Buses). But stations preferred cheaper access game shows (which increased from 11% to 23% in the first access year) and the foregoing non-game shows were all promptly discontinued.

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* See Original Joint Appendix of Warner, et al., January 15, 1973, Ex. 4.

The second access year (1972-73) -- Since program plans for the second access season were made in the winter and spring of 1972 -- long before the Commission's Notice of Rule-making in October 1972 -- Frank concedes that there was stability in the second access season. "Access time was then thought to be on a reasonably stable footing and was assumed by many in the industry to be a permanent part of our broadcast structure" (Frank comments, p. 80). Yet, game shows increased to 49% in the second access year and other forms of programming sharply declined still further.

The third access year (1973-74) -- This was the "golden age" of Ozzie's Girls and Dusty's Trail, which the Commission hoped might be harbingers indicating that stations would not always prefer cheaper game shows (44 FCC2d 1081, 1138). But nevertheless game shows rose to 55% in the third access year and those two heralded non-game shows disappeared.

The fourth access year (1974-75) -- PTAR II was in *de facto* effect for more than six months (November 1973 to June 1974). Yet, under PTAR II, game shows continued to increase to 66%. Moreover, with the Court's unexpected one-year stay of PTAR II in June, this presented an unusual opportunity for stations to use some of the restored time for local shows geared to meet minority and other community interests. But minority-interest local shows amount to less than 1/2 of 1% this season -- far less than any *one* of the leading access game shows.*

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* Compare SJA, Table I, and JA, Table VIII.

The "uncertainty" excuse is also belied by other undisputed statistics. Of the top 48 shows that were produced for access since PTAR and subsequently cancelled, 41 were non-game shows -- including the programs mentioned above plus MGM's Young Dr. Kildare, Walt Disney's Mouse Factory, Circus, Orson Welles Great Mysteries, Star Lost, Jonathan Winters and Family Classics. In short, despite alleged "uncertainty", substantial investments were made in more than 40 dramatic, comedy and other shows. But they could not survive the blitz of cheap game shows.

Those undisputed facts give a hollow ring to the claim that "uncertainty" prevented the production of diverse access shows. That is simply not true. They were produced and failed. It was inevitable economic forces -- not claimed uncertainties -- that led to the cheapness and sameness of access fare. The so-called first run access syndication market simply could not support diverse or more expensive programs. Stations preferred cheap game shows (and double commercials) and always will under any form of PTAR. That was apparent from the following colloquy between Goodson-Todman's Executive Vice President and Chairman Wiley at the hearings (Tr. 90):

> "MR. WILEY: Would you acknowledge another reason why game shows proliferate to some degree in the access hour, is it simply economics?
>
> MR. CHESTER: Certainly."

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III

THE PRESENT COMMENTS HIGHLIGHT PTAR'S SERIOUS FIRST AMENDMENT VIOLATIONS

PTAR I, PTAR II and any alternatives thereto violate basic First Amendment principles. That point, discussed in our prior comments (pp. 33-36), is reinforced by the recent opinion in NBC v. FCC, F.2d (D.C. Cir., September 24, 1973), which strongly warns against Commission intrusion into sensitive programming areas.

The basic Constitutional infirmities of PTAR are also indicated in recently reported statements made by the Commission's last three General Counsels (including the present Chairman) and by [illegible]P's General Counsel.

Thus, according to Variety, October 3, 1974 (p. 11):

> "[Chairman] Wiley told Daily Variety last week, for example, that the antiprogramming concern among the seven [Commissioners] had swelled tremendously because of the prime time access debate now pending -- so much so that he wouldn't be surprised if the seven vote to repeal the rule entirely next month."

Similarly, former General Counsel Pettit reportedly stated: "The Commission started out with all good ends in mind, and ended up with infringements of the First Amendment".*

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* Broadcasting, March 18, 1974.

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In a similar vein, former General Counsel Geller, in recent comments in Docket 19554, referred to the First Amendment "quagmire" created by PTAR waivers (p. 22).

Finally, Henry Goldberg, OTP's General Counsel, in comments in response to the current Notice, states:

> "Our second objection to the original rule is that the widespread requests for waivers that it has generated require the Commission to engage in programming judgments that are properly the province of broadcast licensees. This is not only a questionable allocation of the Commission's time and resources, but, more important, it is an intrusion upon the First Amendment prerogatives of broadcasters and viewers. For the FCC to decide on a program-by-program basis whether the public interest served by the rule itself would be outweighed by permitting prime-time broadcasts of Wild Kingdom, Lassie, National Geographic, or whatever, approaches the brink of the Government determining what people will watch and when they will watch it. Furthermore, this pattern of rulings could lead to government determined program schedules. In fact, this appears to be the direction of the recent modifications of the rule."

Thus, a quartet of distinguished attorneys and public servants -- Chairman Wiley and Messrs. Geller, Pettit and Goldberg -- have all raised serious First Amendment questions about PTAR. And the Court in NAITPD v. FCC went out of its way to say that First Amendment issues are now open to serious question **based on the record** of programs (slip op., 4260). PTAR violates the First Amendment in a myriad of ways:

(1) The basic rule -- Since everybody now agrees that there have been four seasons of steadily deteriorating

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diversity in "what millions of Americans watch on television for an hour every night" (slip op., 4271), this violates the public's paramount First Amendment right to the maximum possible diversity. Associated Press v. United States, 326 U.S. 1 (1945); Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969); Columbia Broadcasting System v. Democratic National Committee, 412 U.S. 94 (1973); Mt. Mansfield Television Inc. v. FCC, 442 F.2d 470 (2d Cir. 1971). And the rule clearly cannot be continued by "speculation" that things might get better in the future, particularly in the face of contrary economic imperatives dictating decreased diversity -- and also particularly since those promises come from parties who have consistently broken their word to the Commission in the past. First Amendment rights cannot be sacrificed on the basis of "speculation". Columbia Broadcasting System v. Democratic National Committee, supra, at p. 127.

(2) The motion picture ban -- No one defends its Constitutionality. Sounder is taboo; Bowling for Dollars is preferred. (See our prior comments, pp. 29-31, 34.) As the recent Baer-Geller-Johnson comments in Docket 19554 state: "Presentation of programming such as feature films is plainly entitled to First Amendment Protection" (p. 10; footnotes omitted).

(3) The off-network ban -- This censorship is equally indefensible. Sanford and Son is contraband; New

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Treasure Hunt (it "brings out the worst in human beings" according to its producer*) is preferred. (See out prior comments, pp. 31-32, 34.)

(4) The modifications -- The modifications in PTAR II will surely not produce more diversity, the viewers' paramount right under the First Amendment. Indeed, NAITPD predicts (e.g., pp. 145, 148-49) that there will be less diversity, if that is possible. Moreover, PTAR II's combination of total bans on certain program types (such as motion pictures and former network series even when independently produced) with its permissive preferred program categories places the Commission squarely in the programming business in an unprecedented and intolerable manner.

(5) Waivers -- The FCC must always consider waiver requests.** And the vague definition of the preferred program categories in PTAR II, the off-network ban and other provisions of the rule will surely invite a new flood of waiver requests. Lassie and Mr. Magoo are sure to have company in the government-programming evaluation contest. Everybody agrees subjective government judgments as to programs raise the most profound First Amendment problems. But that is inherent in any form of PTAR.

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* TV Guide, 8/10/74 pp. 16-18, 20, 22.

** U.S. v. Storer Broadcasting, 351 U.S. 192 (1956); WAIT Radio v. FCC, 459 F.2d 1203 (D.C. Cir. 1972).

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(6) Frank's multiple episode ban -- Frank repeats its suggested ban on "multiple exposures" of "the same program in access time in the same week" (p. 126). But this proposal -- a far-reaching suggestion beyond the scope of this proceeding -- was previously rejected by the Commission. Frank advances no new arguments. Frank's proposal would disrupt long-established viewer habits and choices. Many viewers look forward to their favorite characters in continuous episodes at regular hours. Frank's proposal would also disrupt long-established station scheduling patterns -- ones particularly important to UHF and independent stations. Finally, it would disrupt production activities since most network series, heavily deficit-financed in the first place, depend on syndicated exhibitions which are generally broadcast on a multiple "exposure basis".* Frank's proposal epitomizes the First Amendment dangers inherent in Commission intrusion into programming judgments.

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* Frank apparently makes this proposal because his two game shows are not stripped in access (JA, Table VIII). But one of them, Name That Tune, is stripped on the NBC daytime network with an extra episode distributed by Frank for access (JA, Table VIII). Frank does not suggest a ban on daytime stripping of this show or urge that this daytime network stripping makes his sixth version a prohibited "multiple exposure" in access time.

IV

IT IS CONCEDED THAT PTAR HAS INCREASED NETWORK DOMINANCE

The present comments also show that PTAR has frustrated its second basic objective. Instead of decreasing network dominance, it has strengthened it.

Thus, not a single party challenges (or even discusses) the Pearce Report which demonstrated how PTAR had increased network power. That is remarkable because the Court (4268-70) was particularly critical of the fact that this Report had been ignored and because the current Notice specifically asked for comments on numerous topics dealing with the ultimate question "whether the justification for the rule in 1970-71 -- as a means to lessen network domination -- is valid in practice" (¶ 6).

Inexplicably, CBS and NBC do not even respond to this question. Their silence is telling. And ABC, as shown below, in effect agrees with the ultimate conclusions in the Pearce Report. The fact that PTAR has increased network dominance is also shown by the present position taken by the three networks on the future of the rule. ABC urges a return to PTAR I. NBC, who learned to live with PTAR I ("we are not as offended by the rule as we used to be", Tr. 376-377), now says that it could also learn to live with PTAR II. And CBS, while expressing philosophical objections to government rules that

interfere with sensitive programming decisions, urges that the admittedly unconstitutional PTAR II be continued in the 1975-76 season. Thus, the targets of PTAR do not seem to be as "offended as [they] used to be" by the rule. That is dramatic proof that PTAR has not achieved its goal of diluting network dominance.

OTP and Metromedia (once a leading PTAR advocate) also agree that PTAR aggravates the problem of network dominance. That is also the unanimous view of the leading investment analysts who have studied PTAR's impact -- including Forbes (2/1/73), Coleman & Company (7/74), and Tucker Anthony & Day (6/27/74).* The detailed Coleman Report, which reaches the same basic conclusions as the Pearce Report, states:

> "The recent reversal of proposed prime access rule changes, by reducing fall network inventory, has tightened prices and improved the outlook for the 1974-75 selling season".
>
> * * *
>
> "What looked like a moderately good 1974-75 selling season for the television networks is turning into what may be a small boom,

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* The Justice Department, criticized by the Court for its cursory brief (4269-70), again files short and conclusory comments not mentioning the Pearce Report. The networks have claimed that participation by the Department in these proceedings will bar the continued prosecution of its antitrust actions against them. See United States v. NBC, CBS and ABC, 1974 CCH Trade Reg. Rpt. ¶ 74,885 (C.D. Cal., October 23, 1973).

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thanks to the recent court decision ....
The networks have each dropped an hour of
regularly scheduled programming from their
original lineups and now intend to do only
an occasional amount of Saturday night chil-
dren's and documentary programming. As a
result of this, about 5% of the fall prime
time inventory was eliminated, and it is
likely that this will tip the supply/demand
balance to a sellers market. Consequently
the 1974-75 outlook for the networks has
improved considerably. By the same token
the impact will probably be neutral to
somewhat negative for stations, mainly on
the cost side" (pp. 4-5).

* * *

"When 14% of the available prime time was
eliminated, the networks found themselves
with a much higher percentage of their in-
ventory already sought after, and conversely
far fewer marginal programs to sell .... We
believe that as long as the prime time access
rule stays as it is, this improvement in net-
work stability will continue .... Just as
the prime time access rule helped the net-
works by reducing supply at a time of weak
demand, it hurt stations by adding
inventory" (pp. 6-7).

The <u>Coleman Report</u>, as noted below, also finds -- like the <u>Pearce Report</u> -- that PTAR has enhanced network leverage over independent program producers.

OTP, which has previously submitted a detailed study of network program practices, now declares:

"... by constricting artificially the amount
of network prime time, the rule appears to
have strengthened the networks' position and
weakened the U.S. program production industry,
contrary to its original objectives ....
There are enough anticompetitive forces at
work in TV without the Government adding more".

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Similarly, Metromedia states in its present comments (p. 2):

> "The rule has wholly failed to diminish the power of the networks over prime time television. Moreover, the rule has been counterproductive in that it has worked to the disadvantage of the only real challenge to network dominance -- independent television. By undermining the economic base of independent television stations, the Access Rule has reduced the ability of those stations to compete effectively with the networks".

We shall now consider other comments with respect to the specific areas in which PTAR has enhanced network power.

PTAR Increases Network Leverage In Prime Time

The Pearce Report and the other disinterested economic experts cited above have found that PTAR's shrinkage of the already-limited prime time market has increased the networks' leverage over affiliates, advertisers and independent program producers. CBS and NBC do not question this. ABC, in effect, admits it (pp. 17-23).

As for stations, ABC admits that PTAR "has resulted in somewhat improved clearance levels" and virtually eliminated any preemptions -- 1.5% of all programs (pp. 21-22). In 1970, ABC predicted that PTAR "may offer the benefits of option time".* It was right.

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* ABC Petition for Reconsideration, June 12, 1970, p. 6.

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As for advertisers, ABC admits that PTAR's "cut-back to three hours per night has tended to firm up, or stabilize, the market for network commercial positions" (p. 18).

As for independent producers of programs, ABC admits that since 1970 there have been "somewhat lower prices to producers than would otherwise have been the case" (p. 20).* Indeed, these prices are way below cost (Pearce Report, pp. 110-117).

The Networks Exercise Significant Power Over the Creation of New Access Programs

As shown in our prior comments (pp. 15-17), access producers all agree with the conclusion in the Pearce Report that they will not undertake the risk of creating new programs

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* ABC (pp. 20-21), however, blames this on PTAR's companion rules (the financial interest and syndication rules). But, aside from its failure to document this naked claim with facts and figures, ABC ignores the obvious greater leverage it has when a great many independent producers are competing for fewer and fewer prime-time slots in the ABC schedule. Since ABC admits this reduction in time availabilities allowed it to raise prices to advertisers, the same supply/demand tilt obviously worked to its advantage vis-a-vis outside producers. The dwindling outlet for independent producers is caused not only by PTAR's three-hour cut-back, but also by ABC's increased internal production of programs -- a practice which ABC purportedly adopted because of PTAR's companion rules. Thus, in 1970, ABC told the Commission that the financial interest rule "will almost inevitably lead the network companies to greater amounts of in-house production, and consequently to less reliance upon independent producers". ABC Petition for Reconsideration, June 12, 1970, p. 73.

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without an advance commitment from a network O & O group or at least the largest stations therein.*

Indeed, NAITPD's present comments repeat that "sales to network owned and operated stations are enormously significant" and "close to vital" (pp. 41-42); that "the lack of an O & O sale in New York, Los Angeles or Chicago means no sale at all in the three largest markets in the country for most syndicators because the networks own all nine affiliates in those markets" (p. 42); and that in the future "for the straight sold half-hour, weekly series, O & O sales will never become significantly less important unless O & O's disappear because they are the dominant affiliates in terms of both markets and total coverage" (p. 49).

The proof of the pudding is that virtually every new access show requiring a significant investment has, in fact, been purchased by a network O & O group or most stations therein. For example, in the 1972-73 season, only six of the top access shows were "new" (i.e., shows that were not cheap replications of old or current network game shows). Five of those six programs appeared on all or most of the O & O

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* CBS and NBC do not even discuss this topic. ABC asserts (pp. 15-16) that group buys do not assure success -- but they do assure access. ABC also states that group buys are not "universally the case" -- but, as shown below, almost all new access shows were made possible by prior network O & O commitments.

stations of one of the networks.* Last year, four of the top access programs were "new". All appeared on all or most of the stations of a network group.** This season, there is only one new non-game show in the top 22 access shows (JA, Table VIII). It was purchased by network O & O stations.*** Thus, the networks exercise control over what millions of Americans see in access time across the nation.

While it has been suggested that purchases by <u>all</u> five stations in a network O & O group are somewhat lower, there was really no significant pattern in prior years.**** To the extent that there is some decline in total group buys this season, it is because the network O & O's are increasingly avoiding dramatic and comedy access shows and leading the stampede to cheaper game and animal programs.***** Indeed, 25% of all access entertainment time this season is filled with sixth or seventh episodes of game shows purchased by the networks for day-time stripping and typically produced in their own facilities.****** Once again, the networks are setting the pattern of access viewing for the entire nation.

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* <u>UFO</u> (CBS), <u>The Protectors</u> (CBS), <u>Police Surgeon</u> (NBC), <u>The Adventure</u> (NBC), and <u>Half of the George Kirby Show</u> (ABC).

** <u>Dusty's Trail</u> (CBS), <u>Ozzie's Girls</u> (ABC), <u>Star Lost</u> (NBC) and <u>Great Mysteries</u> (CBS).

*** <u>Last of the Wild</u> (four CBS stations).

**** SJA, Table II.

***** SJA, Table II; <u>Broadcasting</u>, July 15, 1974, p. 21.

****** JA, Table VIII.

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In summary, PTAR has turned out to be a pro-network rule contrary to its stated objective. That is why the networks and their game-show allies* urge that the rule should be continued.

V

PTAR HAS INJURED INDEPENDENT AND UHF STATIONS

The sudden dramatic shift in position of Metromedia (the nation's largest owner of independent stations) and INTV (representing most VHF and UHF independents) demonstrates that PTAR has injured independent stations in competing with the more powerful network O & O and affiliated stations contrary to the Commission's original expectations.** PTAR has injured independent stations in several respects:

Advertising time -- PTAR has vastly increased the amount of local spot time availabilities in each market (particularly with double commercial loads in access shows). According to Metromedia's comments (pp. 4-5):

> "As these [network] stations gained more experience under the rule, they developed sophisticated packaging techniques which enabled them to combine the access inventory with other spot positions with the result being a dramatic increase in the affiliates share of

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* The leading access game-show producers are closely allied to the networks contrary to their claims that "Hollywood producers" are the networks' "favorites". Those "favorites" have brought an antitrust action against two of the networks (CBS and ABC). The access game-show producers have not. Indeed, as noted above, 25% of access entertainment time is filled with extra episodes of network daytime strips produced in network facilities. See JA, Table VIII.

** 23 FCC2d 382, ¶ 23.

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the market dollars. For example, affiliates have only a limited number of local positions within the highly rated network prime time programming hours. These positions are often sold in four-week orbits entitling the advertiser to one prime time spot per week. By packaging three network prime time spots with one access time spot, the affiliates stretch the limited number of network adjacencies and sell more four-week orbits .... The results of the increase in local inventory and the development of packaging have been dramatic. Independent stations have suffered severely vis-a-vis their affiliated and owned and operated competitors in the battle for spot television business".

Metromedia's comments demonstrate that while advertisers spent $5 million more on spot time in Los Angeles last year, the local independent stations suffered a <u>decline</u> of $1.7 million in spot revenue (pp. 5-6).

Investment analysts share Metromedia's view. <u>Value Line</u>, September 27, 1974, states (p. 1772):

"Network business is booming and local ad dollars continue in an upward trend. But the independent (non-affiliated) broadcasters located in major metropolitan markets, of which Metromedia, is the largest, are not sharing in this good business".

Similarly, the recent <u>Coleman Report</u> states:

"We believe that the prime time access rule has been an important factor, for instance, which has generally favored the television networks at the expense of television stations" (p. 2).

* * *

"While ratings for independents generally rose because independents were allowed to show more popular off-network reruns and affiliates were not, the latter were often able to bury the access period inventory in attractive packages of

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local news spots, or adjacencies to hit network shows. Independents are still viewed in a somewhat secondary way by many agencies, and they generally get cut back first and restored last when there are [illegible]les in television advertising. The access rul[illegible] increasing inventory in attractive time [illegible]ods, has apparently compounded the volatili[illegible] of the independents" (p. 10).

Programming -- Independent and UHF stations, without a network feed, have always been heavily dependent on programs that have played on the networks and then are syndicated to local stations. But PTAR has decreased the amount of new programming created by independent producers for the networks and, consequently, has reduced the flow of off-network material to independent and UHF stations. This artificial shortage has already driven up the prices of off-network programs to the particular disadvantage of independent and weaker stations. The increase in such prices caused by PTAR is documented by MCA's testimony at the hearings (Tr. 196-97), the Pearce Report (p. 82), the Coleman Report (p. 10), and Metromedia's recent statements:

> "Asking prices for syndicated shows which are an extremely important part of any independent's program schedule have more than doubled in the last several years. It's not hard to see the significant effect that increased prices of program product and declining revenues has on independent stations. There is no doubt in my mind of the economic effects of access. Surely the silence of affiliates on the matter loudly pronounces their favor of it."*

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* Metromedia letter to Dr. Pearce, August 8, 1974.

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In short, PTAR -- contrary to the Commission's intent -- has injured independent and UHF stations in their competition with the more powerful network O & O and affiliated stations. This injury will grow worse as the flow of off-network product declines still further with each passing year under PTAR. In times of economic recession, PTAR is creating particularly serious potential dangers for the long-range health of independent and UHF stations.

VI

PTAR HAS INJURED THE INDEPENDENT TELEVISION PRODUCTION INDUSTRY

Claims by PTAR's advocates that the Commission should be unconcerned about the deteriorating health of the independent television production industry are contrary to long-established Commission policies. The Commission, for example, has stated that it is vital to "insure the continued supply of television programming"; and that a healthy program production industry is "fundamental to the continued functioning of [the] broadcast" industry.*

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* Cable Television Report and Order, 37 Fed. Reg. 3252, 3261, 3269 (1972).

The plight of the independent television production industry -- as evidenced by the comments filed by the vast majority of independent producers against PTAR -- grows worse. Indeed, ABC's present comments, as noted, concede that prices paid for television programs have been kept "somewhat lower ... than would otherwise be the case" (p. 20). This aggravates an already unhealthy deficit-financing system imposed on independent producers by network leverage.

In this connection, the Coleman Report, like the Pearce Report, concludes:

> "The reduction in time [from PTAR] caused a supply/demand imbalance in favor of the networks vis-a-vis the program producers" (p. 10).
>
> * * *
>
> "While the producers have absorbed as much if not more of recent cost increases than the networks, due partly to the change in the supply/demand balance occasioned by the access rule, it is questionable how long this can go on. Most of them make no money on network programming anyway, and deficit financed such product in order to gamble on the lucrative syndication market potential of a hit show when it goes off the air and can be sold to stations" (p. 12).

The sequence of events in the oppression of independent producers follows a clear scenario:

(1) In 1970, the Commission found that the networks exerted undue leverage over independent producers, particularly the major motion picture studios that supplied a great deal of popular programming (23 FCC2d 382, ¶ 9). PTAR and its companion rules were designed to alleviate this problem. But the rule

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has aggravated it by removing opportunities for $60,000,000 of new production for the network (measured by 1972 dollars)* and by the restrictions on off-network programs and motion pictures.

(2) The networks use their "power" and facilities to make their own entertainment programming for their entry-proof market in order to force outside producers to sell programs at below cost. This is clear from the Pearce Report (pp. 110-115), the Coleman Report (pp. 10, 12), and ABC's testimony in Docket 19554 (Tr. 365). This is true for both short and long form programming. For example, made-for-TV movies now constitute more than 60% of network feature films.** Last year, ABC made almost 40% of its own TV movies and purchased the balance of its requirements from independents at below cost.***

(3) The only possible way for independent producers to survive in this deficit-finance environment created by network leverage is to recoup their costs from the post-network syndication market. But that has become increasingly difficult because PTAR reduces network prime-time slots and, in addition, the networks order fewer and fewer new episodes of a series -- and, as a result, there is less and less likelihood

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* NBC Comments, January 15, 1973, p. 3.

** MPAA Comments in Docket 19554, App. B, Table 10.

*** Pearce Report, pp. 106, 110-115, App. II, A; ABC testimony in Docket 19554, Tr. 365.

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of achieving the long network runs that make properties suitable (sufficient episodes and popularity) for the syndication market. PTAR further compounds the problem by foreclosing a significant portion of the prime-time syndication market in the top 50 markets by the off-network ban.

(4) On top of these problems for independent producers, PTAR's companion rules, according to ABC, have led to increased internal network production of their own entertainment programs.* As noted above, ABC produced 40% of its own made-for-TV movies in 1972-73, according to the Pearce Report (p. 106; App. II A).

Thus, with prices for network sales kept lower than a fair market level (way below cost), the diminished likelihood of developing properties for syndication, and increased internal network production for their captive markets, the viability of the independent television production industry is in worse jeopardy than when the Commission enacted PTAR.

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* See footnote, page 20, *supra*.

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These are not fanciful claims. Broadcasting, September 16, 1974, states (p. 3)

> "Hollywood TV program suppliers, their costs skyrocketing and their P & L statements askew, see dreary consequences if networks don't start paying more for software. Pinch is being felt particularly by independents, who now say their only shot at profit is through syndication run after prolonged network exposure of series. Production costs have now outrun producers' negotiating power, they say. There used to be chance to recover costs and make small profit from first run plus first rerun in given network season. Not so now, producers complain. One independent, with four shows in new season's prime time, sees no hope of breaking even on 1974-75 production in next few years if at all."

Broadcasting, the Pearce Report, the Coleman Report, the OTP Study, plus ABC's own admissions, show that PTAR has aggravated the plight of independent television producers. They are subjected to far greater leverage now from the networks than the unfair pressures condemned by the Commission four years ago when it passed PTAR and its companion rules.

To obscure this fact, some PTAR proponents claim that several motion picture studios have recently had successful years because of the phenomenal success of a few theatrical features. But that claim misses the point. Television production _per se_ is in jeopardy. Moreover, the feature side of the business is at best mercurial, with sudden ups-and-downs, and some majors have not in fact fared well in recent years.* Indeed, the new Baer-Geller-Johnson comments in Docket 19554 describe "the now ailing motion picture industry" (p. 3).**

PTAR has clearly injured the independent television production industry. On this count, the rule has also been counter-productive.***

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* Columbia's substantial losses continue. And MGM has adopted a more selective production schedule.

** Claims that "Hollywood" suffers by boycotting PTAR are specious. Producers cannot make quality entertainment ($100,000-$150,000 per half-hour) for the first run syndication market (where $5,000 game shows predominate). And several producers have in fact had, or still have, cheaper access shows on the air. For example, 20th Century Fox had four access shows on the air in the 1972-73 season; three in the 1973-74 season; and several this season (see Tr. 162-68; _Variety_, 4/3/74, p. 35; JA, Table VIII). MGM produced "Dr. Kildare" for access at reduced budgets, but it could not survive the game show onslaught (Tr. 190-92). Columbia has had two syndicated access series, including a current game show (JA, Table VIII). Allied Artists distributed an access show (_Variety_, _supra_). And Warner and MCA developed access projects that did not attract O & O sponsorship.

*** Claims that foreign access shows overall have declined somewhat from the 20% level in 1972-73 are merely a reflection of the sharp upsurge in cheap game shows -- now typically extra episodes of daytime network strips.

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VII

PTAR SHOULD BE REPEALED FOR THE 1975-76 SEASON

NAITPD and Frank claim that the Court's opinion prevents repeal of PTAR until sixteen months after final judicial review of Commission action. That is specious. The Court specifically held that changes could take effect in the fall of 1975 -- even if the Commission elected to hold no further proceedings. By asking for further comments, the Commission certainly did not intend to perpetuate the game show monopoly and First Amendment violations.

Prompt repeal is required to avoid further public injury. That would be so assuming arguendo and contrary to fact that such action might cause substantial economic injury to some private interests. General Telephone Co. v. United States, 449 F.2d 846 (5th Cir. 1971) and cases cited therein. But there will be no such injury because access time is now filled almost exclusively with game shows, animal programs or foreign imports. The game shows are made virtually overnight and 25% of access time is now filled merely with extra episodes of daytime strips; the animal shows are "waivered" or cut-and-paste assemblages of foreign stock footage; and shows produced for foreign networks and dumped here merit no particular FCC solicitude. Moreover, all parties have been on notice long prior to the 1975-76 season. Indeed, the Commission's November 1973 Public Notice was almost two years before the start of that season.

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CBS proposes PTAR II for the 1975-76 season and total repeal for the following season on the theory that it requires lead time to schedule all the former access time periods that would be made available. That plea for delay does not withstand analysis. For example, there were 357 pilots for new programs from 1972-74. -- only 57 became weekly series.* There is thus a large existing supply of product and a program industry with great elasticity of supply and substantial unused capacity. Moreover, the networks have often made major schedule changes on short notice** and typically recast their schedules for the "second season" in January. In addition, the networks already have series and public affairs programs that were temporarily shelved by the Court's unexpected stay. Finally, if the networks cannot complete full schedules in time, or prefer not to do so, then stations could program any open time periods themselves, as they now do. They can present local shows for community needs or select from the pool of syndicated material, including shows made for access.

The Commission specifically rejected similar CBS claims for delay and lead time earlier in these proceedings (25 FCC2d 318, ¶ 43).

There is time urgency and there should be no procrastination. Diversity for millions of viewers deteriorates every day. First Amendment rights are constantly being eroded.

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* JA, p. 11.

** See Comments of Quinn Martin Productions, January 15,1973.

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There is a continuing debate and the Commission is distracted from other vital tasks left undone. Four years of the PTAR experiment are enough. The rule should be phased out as swiftly as possible.

VIII

THERE SHOULD BE FCC ACTION TO ASSURE FAIR ACCESS FOR MINORITIES AND OTHER LOCAL GROUPS. BUT PTAR IS NOT THE PROPER, EFFECTIVE OR CONSTITUTIONAL RULE

None of the minority and other local groups filing comments defend the program fare which now fills most access time. On the contrary, they generally recognize that it has degraded the diversity and quality of programming on an over-all basis.*

Spokesmen for 7,000,000 senior citizens, many "shut-ins" who rely so heavily on television, specifically urge repeal of PTAR because of the sameness and inferior nature of access programming.** Some leading spokesmen for ethnic groups

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* For example, Community Coalition for Media Change complains (p. 3): "We are inundated with Game Shows and outdated serials that don't even qualify as good entertainment."

** Comments of American Association of Retired Persons and National Retired Teachers Association. For senior citizens, Lawrence Welk is not a sufficient justification for keeping PTAR. That program is the exception to the game show flood and would undoubtedly stay on the air even without the rule. (See Commission Opinion denying NAITPD Stay Petition, 3/6/74, ¶ 4; and Appendix C to NAITPD's Supplementary Information In Support of Stay Petition, January 21, 1974.) [footnote continued]

-- Black Enterprise (9/74, p. 7), Clarence Jones (of The Amsterdam News (Tr. 208-21), and Dr. Bernard Gifford (of New York Rand and now Deputy Chancellor of the New York City Board of Education (Tr. 460-64)* -- also urge repeal because of the degradation of early-evening programming and the adverse impact on urban children who are so dependent on television.

On the other hand, some spokesmen for minority groups assert that because PTAR opens up 2,100 half-hour time slots on affiliated stations in the top 50 markets and most of this time is filled with cheap, repetitive game shows, this enhances their bargaining leverage at renewal time to obtain agreements from some stations to present some local programs. But PTAR is not the proper or Constitutional way to achieve this goal -- and it has not, in fact, been effective in practice.

(1) PTAR was passed for two primary goals -- to increase diversity of programs via a revived syndication industry and to decrease network dominance. The stimulation of local programs was merely a possibility relegated to a footnote in the opinion originally promulgating the rule.** PTAR must

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[footnote continued]

To preserve Lawrence Welk, which would in any case be used by stations without PTAR, it is too much of a price to pay to inundate the airwaves with, and subject senior citizens and younger viewers to, a plethora of cheap game shows and to eliminate 21 half-hours of new and original network series, many with special interest appeal to older viewers (The Waltons, All in the Family, Love Nest).

* Both appearing in their individual capacities.

** 23 FCC2d 382, ¶ 23, footnote 37. (Also see NAITPD Comments on this point, pp. 9, 87.) Indeed, the FCC stated that stations would generally rely on syndicated, not local, programs (25 FCC2d 318, ¶ 21, footnote 20).

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stand or fall on the two basic rationales on which it was passed.*

(2) In any event, PTAR has produced a de minimis amount of local programming geared to minority interests. Only 11 of the 2,100 access half-hour slots in the top 50 markets -- about 1/2 of 1% -- are scheduled to be devoted to local programs geared to ethnic groups this season.** Indeed, even apart from ethnic local shows, "there has not been a great impact from locally produced public affairs programming" (Pearce Report, p. 66) -- which Frank calculates fill only about 2% of all access time (Comments, Ex. F).

(3) PTAR, at the same time, has produced syndicated programs, occupying the bulk of access time, that neglect minority interests and also has eliminated network public affairs and series programs that deal with such interests. Access game programs (with no minority hosts) and foreign access shows ignore minority views. Indeed, Frank's comments acknowledge that "we expect that minority groups are not overly

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* S.E.C. v. Chennery Corp., 332 U.S. 194 (1947); Burlington Truck Lines, Inc. v. U.S., 371 U.S. 156, 168-69 (1962); Columbia Broadcasting System, Inc. v. FCC, 454 F.2d 1018 (D.C. Cir. 1971).

** SJA, Table I. None of the minority groups has presented an analysis of all access time in the top 50 markets but instead selected random examples. Moreover, most of the isolated examples are not the result of PTAR -- they are not presented in access time or on stations in the top 50 markets covered by the rule. That is shown in SJA, Table III, which analyzes the programs described in Appendix A of the comments of the National Black Media Coalition.

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impressed with the contributions syndicated access programming has made toward serving their needs" (p. 123). The only two syndicated shows mentioned in this category -- Black Omnibus and La Raza -- have nothing at all to do with PTAR.*

(4) Assuming arguendo that PTAR had led to more than 1/2 of 1% local programs geared to minority groups, it would have done so only at the exorbitant price of deteriorating diversity in the rest of the time for all viewers.

(5) If PTAR were now continued on the theory that it might indirectly lead to more local minority-interest programming, while at the same time generally degrading program diversity for millions of Americans, it would violate basic Constitutional principles and suffer from over-breadth. NAACP v. Alabama, 377 U.S. 288, 307 (1964); Keyishian v. Board of Regents, 385 U.S. 589 (1967); U.S. v. Robel, 389 U.S. 258, 265-66 (1967); Lovell v. Griffin, 303 U.S. 444, 451 (1938); Shelton v. Tucker, 364 U.S. 479, 488 (1960). In Shelton, for example, the Supreme Court declared that in First Amendment areas:

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* Black Omnibus appeared in only one access time period on a network affiliate in the top 50 markets (Philadelphia) covered by PTAR in 1972-73. Its other exhibitions in 1972-73 were in time periods or markets not covered by PTAR. (See ARB's Arbitron Rating Reports, March and May 1973.) That syndicated program was discontinued after production of only 13 episodes in the 1972-73 season because, we have again been informed by its producer and distributor, of a lack of advertiser support -- as shown by the low ARB ratings. As for La Raza, McGraw-Hill Broadcasting, when it acquired the Time-Life stations, agreed to produce nine episodes for its stations. The show has not appeared on other stations. It is also not a product of PTAR.

"... even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose ..." (at p. 488; footnote omitted).

If the Commission is prepared to deal with the problem of fairer representation on the public airwaves for ethnic and other local community groups, it must consider stronger measures in the license renewal process or a policy requiring stations to devote a specified amount of time to such local programming.

"[I]f present licensees should suddenly prove timorous, the Commission is not powerless to insist that they give adequate and fair attention to public issues." Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 393-94 (1969).

CONCLUSION

The Court and the Commission have asked for the views of the public, not just certain segments of the public or just private vested economic interests, about PTAR. While representatives of some groups have filed formal comments, the views of all the people have been made crystal clear.

It is undisputed that the public has reduced its viewing of those stations presenting access programs in the access time periods.* They do not like those shows as much as the more diverse and better programs they could watch on those stations before PTAR.

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* See the Pearce Report (pp. 82-84, 88); the Coleman Report (p. 10); ABC's original comments, January 15, 1973 (pp. 12-13, 19, 28,62); Metromedia's original comments, January 15, 1973 (pp. 28-30).

Moreover, all of the nation's leading critics -- who monitor television for all American viewers -- have spoken with one voice against the degraded diversity and poor quality of access programming. This includes The New York Times, The Washington Post, The New York Post, The Los Angeles Times, TV Guide, Time, The Wall Street Journal and Broadcasting.*

The people and critics have spoken with a single voice. They say that PTAR has degraded "what millions of Americans watch on television for an hour every night." (Slip op. 4271).

In summary, PTAR has frustrated its two stated goals -- it has decreased the diversity and quality of programs for the American public and it has increased network dominance. It has proven counter-productive and violated fundamental public interest and First Amendment considerations. It should be repealed as soon as possible to avoid further irreparable injury.

---

* See supra (p. 4) and our prior comments (pp. 10-11).

Respectfully submitted,

WARNER BROS. INC., UNITED ARTISTS CORPORATION and MGM TELEVISION INC.

By Paul, Weiss, Rifkind, Wharton & Garrison

Stuart Robinowitz

Stuart Robinowitz
345 Park Avenue
New York, New York 10022

Fly Shuebruk Blume & Gaguine
45 Rockefeller Plaza
New York, New York 10020

October 10, 1974

411

EXHIBIT A

412

ORIGINAL
77 - 802 FILE
Received ... JUL 17 ...
Office of ...

GOODSON
TODMAN
PRODUCTIONS
NEW YORK

RECEIVED
JUL 15 1970

375 PARK AVENUE · NEW YORK 22, NEW YORK · PLAZA 1-0600

JULY 8, 1970

THE HONORABLE DEAN BURCH
CHAIRMAN
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

12182

DEAR SIR:

THIS LETTER IS WRITTEN WITH RESPECT TO THE COMMISSION'S RECENT REPORT AND ORDER DOCKET 12782 LIMITING THE AMOUNT OF PRIME TIME PROGRAMMING A TELEVISION STATION MAY ACCEPT FROM A NETWORK SOURCE.

IN THE REPORT AND ORDER THIS COMPANY IS MENTIONED AS HAVING BEEN A REGULAR PROGRAM SUPPLIER TO THE NATIONAL TELEVISION NETWORKS FOR MANY YEARS.

WE UNDERSTAND THAT THERE HAVE BEEN NUMEROUS FILINGS WITH THE COMMISSION WHICH ARGUE THAT IF THE COMMISSION'S ORDER STANDS INDEPENDENT PROGRAM SUPPLIERS WILL BE UNABLE TO OBTAIN THE FINANCIAL SUPPORT NECESSARY TO PRODUCE TELEVISION SERIES ON A SYNDICATED BASIS TO FILL THE PRIME TIME PERIODS VACATED BY THE NETWORKS.

THE PURPOSE OF THIS LETTER IS TO ADVISE THE COMMISSION THAT DURING THE TELEVISION SEASON 1969-1970 GOODSON-TODMAN PRODUCTIONS AND ITS RELATED COMPANIES PRODUCED AND LICENSED FOR SYNDICATION DISTRIBUTION 20 HALF-HOURS PER WEEK OF NEW TELEVISION PROGRAMS, CONSISTING OF FOUR DIFFERENT DAILY SERIES. THREE OF THESE SERIES HAD BEEN PREVIOUSLY TELECAST FOR MANY YEARS BY THE NATIONAL NETWORKS; ONE SERIES WAS BRAND NEW. FINANCING AND DISTRIBUTION ARRANGEMENTS VARIED FOR EACH SERIES IN RELATION TO MARKET CONDITIONS. STATION LINE-UPS DURING THE 1969-1970 SEASON RANGED FROM 35 TO MORE THAN 60 STATIONS, MAINLY MAJOR MARKETS. PRIME EVENING TIME PERIODS WERE GENERALLY CLEARED ON NON-NETWORK AFFILIATED STATIONS, AND IN VARIOUS MAJOR MARKETS WE WERE SUCCESSFUL IN CLEARING 7:00 - 7:30 PM

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JUL 10 1970

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ON NETWORK AFFILIATED STATIONS. PRODUCTION FOR EACH SERIES VARIED ON AN ANNUAL BASIS FROM 42 WEEKS OF NEW PROGRAMS AND TEN WEEKS OF REPEATS TO A MINIMUM OF 39 WEEKS OF NEW PROGRAMS AND 13 WEEKS OF REPEATS. IN NO INSTANCE DID THE RATIO OF NEW TO REPEAT PROGRAMS APPROXIMATE THE 30/20, 26/26, OR 24/24 THAT HAVE EMERGED IN NETWORK PROGRAM PRACTICES.

FOR THE 1970-1971 SEASON, WE ARE COMMITTED TO PRODUCE AND LICENSE FOR SYNDICATION DISTRIBUTION AT LEAST 15 HALF-HOURS PER WEEK OF PROGRAMS, CONSISTING OF THREE SERIES. WE HAVE BEEN OBLIGED TO HOLD OFF THE MARKET SEVERAL ADDITIONAL PROPERTIES BECAUSE OF THE INABILITY TO CLEAR SUFFICIENT EVENING TIME IN MAJOR MARKETS. IN THE EVENT THE COMMISSION REAFFIRMS ITS ORDER AND BROADENS THE MARKET FOR SYNDICATED PROGRAMS, IT IS OUR INTENT TO PRODUCE ADDITIONAL PROGRAM SERIES INCLUDING BUT NOT LIMITED TO GAME AND PANEL SHOWS. WE BELIEVE OUR EXPERIENCE HAS DEMONSTRATED THE FINANCIAL VIABILITY OF THE SYNDICATED MODE OF PRODUCTION AND DISTRIBUTION. WITH AN INCREASED MARKET POTENTIAL, WE HAVE NO DOUBT OF OUR ABILITY TO INCREASE OUR SERVICE AS A PROGRAM SUPPLIER.

WE NOTE THAT THERE HAVE ALSO BEEN NUMEROUS FILINGS WITH THE COMMISSION FROM HOLLYWOOD LABOR UNIONS, PERFORMERS, AND FILM PRODUCERS ARGUING THAT THE COMMISSION'S ORDER WILL BE INJURIOUS TO THE HOLLYWOOD FILM INDUSTRY. SUCH OBJECTIONS WOULD HAVE BEEN MORE TIMELY AND APPROPRIATE HAD THEY BEEN FILED SEVERAL YEARS AGO WHEN THE NATIONAL NETWORKS VOLUNTARILY SCHEDULED FOR TELECAST IN PRIME TIME FEATURE FILMS THAT HAD BEEN PREVIOUSLY PRODUCED AND THEATRICALLY RELEASED. IN PROGRAMMING THESE FEATURE FILM RERUNS THE NETWORKS REDUCED THE MARKET FOR NEW PROGRAM PRODUCT FAR MORE THAN ANY POSSIBLE EFFECT OF THE COMMISSION'S ORDER.

SINCERELY,

Mark Goodson

MARK GOODSON

MG:LIZ

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EXHIBIT B

ORIGINAL
FILE

FIRESTONE FILM SYNDICATION

477 MADISON AVENUE
NEW YORK, N. Y. 10022

July 14, 1970

Honorable Dean Burch, Chairman
Federal Communications Commission
Washington, D.C.

12782

Dear Sir:

As a distributor of TV programs we are vitally interested in the FCC ruling limiting network service to three hours in prime time.

We are currently distributing To Tell The Truth, which is produced for first run syndication by Goodson-Todman. Although the program is seen in approximately 50 markets, it is limited in most markets to fringe time because of the unavailability of prime time on the network affiliated stations.

We previously distributed two other first run syndicated shows, namely, The Steve Allen Show and Pat Boone in Hollywood, which were produced live on tape by Filmways. Both of these properties were of the variety format and featured top name guest stars daily from the entertainment world. Because of the lack of available time periods, we were unable to clear enough markets to enable us to continue production, and as a result, Steve Allen had a two year run and Pat Boone a one year run.

We are presently in discussions with a number of major TV producers regarding the production and distribution of top quality, first run programs but are severely limited by the lack of available time periods in the major markets.

It is our strong feeling that the three hour network limitation would enable producers and distributors like ourselves to offer excellent and diverse programming of network quality, to fill the additional time periods made available by the three hour limitation.

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DEAN BURCH

(over)

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Honorable Dean Burch July 14, 1970

We therefore urge that the three hour rule, as now constituted, remain in effect in order to encourage the production of more first run programming than is presently possible, and thereby expand the viewer's selectivity from its present limitations.

Yours truly,

Len Firestone

LF/sae

cc: Robert Bartley
Nicholas Johnson
Robert E. Lee
H. Rex Lee
Robert Wells
Kenneth Cox

416A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Consideration of the operation of, and possible changes in, the "prime time access rule," Section 73.658 (k) of the Commission's Rules	)))))))	Docket No. 19622

PROGRAMMING RESULTING FROM THE PRIME TIME ACCESS RULE

1. 1974 - '75 Season
2. 5 Year History
3. Comparisons to prohibited independent programming

JOINT APPENDIX OF:

Columbia Pictures Television
MCA Inc.
MGM Television
Twentieth Century Fox
United Artists
Warner Bros. Television

September 20, 1974

417

This table analyzes, by broad type, those programs scheduled in the 4th year -- '74-'75 -- of the prime time access rule. Prior to the rule, network entertainment programming occupied 1137 half-hours, or 54.1%, of "access time."

For '74-'75, syndicated entertainment programming occupies 1341 half-hours or 63.9% of the total. News, local-interest programs, and movies are scheduled in the balance of "access time."

Table I

1974-75

TOTAL ACCESS PROGRAMMING BY TYPE

	# half-hours		%	
1970-71 season before rule (network programming)		(1137)		(54.1)
- - - - - - - -				
1974-75 season				
Entertainment	1341		63.9	
(Top 22 entertainment programs)		(1161)		(55.3)
News (local and network)	565		26.9	
Local interest (non-news)	146		7.0	
Movies	48		2.3	
Total Access Programming	2100		100.1%*	

*Does not add up to 100.0% due to rounding.

TABLE II

1974 - 1975

ENTERTAINMENT PROGRAMS BY TYPE

	# OF HALF HOURS	%
DRAMA	66	4.9%
COMEDY	6	.4
GAME	880	65.6
VARIETY	161	12.0
TRAVEL/NATURE	150	11.2
CARTOON	4	.3
MISCELLANEOUS	74	5.5
TOTAL	1341	99.9%*

*Does not add up to 100.0% due to rounding.

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This table analyzes program types, before and since the rule.

* * *

For '74-'75, the fourth year since the rule began, the average viewer will again have a very narrow choice of entertainment programming. More than 65% of all entertainment half-hours are game shows, a fivefold increase from 11% in the year before the rule. Meanwhile, those entertainment programs with the highest degree of social relevance -- comedies (like "Sanford & Son," etc.) have declined from almost 22% to under one-half of 1%; and dramas ("The Waltons," etc.) have declined from over 46% to under 5%. In addition, 85% of even that small amount of drama in access is produced abroad, with minimal social content relevant to American life.

TABLE III

FIVE YEAR COMPARISON OF ENTERTAINMENT PROGRAMS, BY TYPE

% OF ACCESS ENTERTAINMENT HALF HOURS

	1970 - 71	1971-72	1972-73	1973-74	1974-75
DRAMA	46.3%	27.7	16.5	11.6	4.9
COMEDY	21.7	18.8	1.7	6.6	0.4
GAME	11.1	22.8	48.6	54.8	65.6
VARIETY	17.2	17.5	18.4	14.0	12.0
NATURE/TRAVEL	2.3	6.3	7.1	10.6	11.2
CARTOON	--	0.2	4.3	1.8	0.3
MISCELLANEOUS	1.3	6.7	3.4	0.6	5.5

Diversity of programming was one of the major goals of the prime time access rule. However, currently during access time, viewers in many cities have little or no choice of what type of program they can watch.

As illustrated in Table IV over half of the top 50 markets offer viewers two, and in some cases three, competing game show strips every weekday evening during access time.

TABLE IV

THREE COMPETING GAME STRIPS

MARKET	PROGRAM	STATION
Cincinnati	BOWLING FOR $$	WKRC
	T or C	WCPO
	TTTT	WLWT
Albany	T or C	WAST
	TTTT	WTGN
AND:		
	LET'S DEAL/H. SQUARES/JEOPARDY	WAST
	BEAT THE CLOCK	WTGN
	DEALER'S CHOICE	WRGB
Orlando	T or C	WFTV
	CONCENTRATION	WDBO
	TTTT	WESH
Greensboro-Winston Salem-High Point	T or C	WGHP
	BEAT THE CLOCK	WFMY
	WHAT'S MY LINE	WXII

TWO COMPETING GAME STRIPS

MARKET	PROGRAM	STATION
Boston	TTTT	WCVB
	WHAT'S MY LINE	WNAC
Detroit	TTTT	WXYZ
	T or C	WJBK
Cleveland	TTTT	WEWS
	T or C	WJW
Houston	TTTT	WHOU
	H. SQUARES/NAME TUNE/PRICE RIGHT/$25,000 P.	WTRK
Seattle	TTTT	KOMO
	T or C	KING
Baltimore	T or C	WJZ
	BOWLING FOR $$	WBAL
Tampa	TTTT	WFLA
	T or C	WTVT
Hartford-New Haven	T or C	WTNH
	TTTT	WHNB

TWO COMPETING GAME STRIPS (cont'd)

Sacramento	TTTT H. SQUARES/NAME TUNE/PRICE RIGHT/$25,000 P.	KOVR KXTV
Portland	TTTT WHAT'S MY LINE	KATU KGW
Buffalo	TTTT BOWLING FOR $$	WKBW WGR
Columbus	BOWLING FOR $$ T or C	WTVN WLWC
Memphis	H. SQUARES/LET'S DEAL/PRICE RIGHT T or C	WREC WMC
San Diego	TTTT LET'S DEAL/PRICE RIGHT/H. SQUARES	WFMB KGTV
Charlotte	CONCENTRATION T or C	WCCB WSOC
Grand Rapids-Kalamazoo	TTTT PRICE RIGHT/H. SQUARES/LET'S DEAL	WZZM WOTV
Greenville-Spartanburg	T or C WHAT'S MY LINE	WLOS WFBC
Dayton	WHAT'S MY LINE BOWLING FOR $$	WKEF WLWD
AND:	T or C H. SQUARES/NAME TUNE/TR. HUNT/PRICE RIGHT	WHIO WLWD
Wilkes Barre-Scranton	T or C DEALER'S CHOICE	WNEP WBRE
AND:	TTTT H. SQUARES/PRICE RIGHT/NAME TUNE/TR. HUNT	WNEP WBRE
Norfolk	T or C TTTT	WTAR WAVY
Birmingham	TTTT T or C	WBRC WBMG
Salt Lake City	T or C LET'S DEAL/H. SQUARES/PRICE RIGHT	KCPX KSL

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This table analyzes access programs by genesis.

* * *

For example, it indicates that 89% of the entertainment programming in access time was not from "new and diverse sources," but rather old or current daytime U.S. network series or pilots, that could be easily and cheaply revived; or imports from foreign networks which, themselves, impose stringent quotas on U.S. production In addition, a large syndication market existed before the access rule. Programs available via syndication, then, without "benefit" of the rule, now fill another 6% of the access entertainment time periods.

Indeed, "new" programming created expressly for access syndication, is only 5.7% of the '74-'75 total, down from '71-'72's 10%, and down even from last year's 5.9%.

TABLE V

FOUR YEAR COMPARISON OF ENTERTAINMENT PROGRAMS, BY GENESIS

% OF ACCESS ENTERTAINMENT HALF HOURS

	1971-72	1972-73	1973-74	1974-75
Programs available without Access Rule				
From: U.S. networks	71.8%	60.8%	61.6%	81.4%
Foreign networks	2.7	17.6	14.3	7.2
Prior syndication	15.5	19.5	18.2	5.7
Programs available "because" of rule	10.0	2.1	5.9	5.7
Total	100.0%	100.0%	100.0%	100.0%

Table VI shows the economic failure of access production, in addition to TV's usual creative risks. The rate of access show failure is about three times the rate of network program failure.

The negative economic ramifications of original access production, combined with the need for network O&O clearance (of non-strip programs) indicates that diverse, high-quality programming cannot be extensively produced and distributed under the rule.

The testimony of the substantial majority of independent producers, and their negative experience developing profitable access programming, is in the FCC record, proved, rather than disputed, by the few exceptions.

Further proof of the predictable counter-productivity of the rule, both creatively and economically, can be found in the following list of 48 programs created or revived unsuccessfully in the first three years alone.

Access programs no longer in production, their producers and distributors, follow on this mortality table.

TABLE VI

"ACCESS PROGRAMS" NO LONGER PRODUCED

PROGRAM (Non-Games Underscored)	FORMER PRODUCER	FORMER DISTRIBUTOR
1. DUSTY'S TRAIL	Sherwood Schwartz	MPC
2. PRIMUS	Metromedia	"
3. ELEPHANT BOY	Metromedia, Asia	"
4. IT PAYS TO BE IGNORANT	Hatos-Hall	Worldvision
5. OZZIE'S GIRLS	Filmways	Viacom
6. GAME GAME SHOW	Chuck Barris	"
7. AMAZING WORLD OF KRESKIN	Bushnell/Canada	"
8. MOUSE FACTORY	Walt Disney	Buenavista
9. YOUNG DR. KILDARE	MGM	MGM
10. THRILLSEEKERS	Four Star Ent.	Four Star Ent.
11. MONTY NASH	Almada, Canada	"
12. JUVENILE JURY	Jack Barry	"
13. STORY THEATRE	Winters Rosen, Canada	Winters Rosen/ Group W
14. HALF OF THE GEORGE KIRBY SHOW	Winters Rosen/Group W, Canada	"
15. DOCTOR IN THE HOUSE	London Weekend TV/ England	Group W
16. STREET PEOPLE	Group W	"
17. NORMAN CORWIN PRESENTS	Group W/Corwin, Canada	"
18. DAVID FROST REVUE	Group W/Paradine	"
19. ON THE BUSES	London Weekend TV/ England	"
20. DEPARTMENT S	ATV/England	ITC
21. UFO	ATV/England	"
22. THE PROTECTORS	ATV/England	"
23. WORLD OF SURVIVAL	Survival-Anglia/ England	"
24. INNER SPACE	Program Syndication Services/Australia	Program Syndication Services

PROGRAM (Non-Games Underscored)	FORMER PRODUCER	FORMER DISTRIBUTOR
25. EVIL TOUCH	Allied Artists, Australia	Allied Artists
26. WORLD OF LOWELL THOMAS	Odyssey/BBC	Time-Life
27. ONE MAN'S CHINA	BBC	"
28. LIFE AROUND US	BBC	"
29. DR. WHO	BBC	"
30. LASSIE	Wrather	Wolper TV/Campbell's Soup/Ogilvy & Mather
31. THIS IS YOUR LIFE	Ralph Edwards	Wolper TV/Lever Bros./Ogilvy & Mather
32. CIRCUS	Joseph Cates, Europe	20th Century Fox
33. AUDUBON WILDLIFE THEATRE	Keg/Canada	"
34. PARENT GAME	Chuck Barris	Sandy Frank
35. ORSON WELLES GREAT MYSTERIES	Anglia/England	20th Century Fox
36. STAR LOST	Glen-Warren/Canada	"
37. THE HENRY MANCINI SHOW	Burt Sugarman	Campbell Ewald/ Chevrolet
38. WACKY WORLD OF JONATHAN WINTERS	Greg Garrison, Campbell Ewald	Campbell Ewald
39. THE ADVENTURER	ATV/England	"
40. THE GOLDDIGGERS	Greg Garrison	"
41. FAMILY CLASSICS	Rankin & Bass/GE/ Tomorrow	GE/Tomorrow
42. ZOORAMA	KFMB/TV	Geo. Bagnell
43. I'VE GOT A SECRET	Goodson-Todman	Firestone
44. ALL ABOUT FACES	Screen Gems, Canada	Screen Gems
45. MOVIE GAME	Henry Jaffe	Syndicast
46. STUMP THE STARS	Stokey	Alan Enterprises
47. MIDWESTERN HAYRIDE	Avco	Avco
48. DEATH VALLEY DAYS	Madison Prods/US Borax	US Borax/McCann-Erickson

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In public affairs programming, for '74-'75, as in '73-'74, no regular weekly network public affairs shows remain in prime time. To understand the full ramifications of the access rule, one must realize that NBC and CBS, alone, offered one hour weekly of public affairs in prime time (plus occasional special broadcasts) before the rule. In the top 50 markets, this is equivalent to 200 weekly half-hour telecasts, no longer seen; by contrast, in '74-'75, individual stations offer only 146 half-hours of local interest programming in access time.

In entertainment programming, using this season's "top 22" access shows as a base, how then can a reasonable comparison be made to new, independently produced programming foreclosed from network distribution by the rule?

357 pilots for diverse, new programs were made for network distribution from '72-'74. Only 57 became weekly series. The balance, of course, represents the diverse creativity denied regular access because of the rule.

Table VII simply lists the top access shows (by clearance) and compares them to network programming (in time-periods adjacent to access from Sunday through Saturday) because audience appeals are similar.

The reader is invited to make his own evaluations of quality, diversity, and independent production sources.

TABLE VII

TOP 23 "ACCESS" BY $\frac{1}{2}$ HR. CLEARANCE (Games underscored)		NETWORK ADJACENT TO ACCESS
* TO TELL THE TRUTH	or	THE WONDERFUL WORLD OF DISNEY (Drama-Nature-Children)
* TRUTH OR CONSEQUENCES	or	APPLE'S WAY (Drama)
* HOLLYWOOD SQUARES	or	THE SONNY COMEDY REVUE (Comedy-Variety)
* LET'S MAKE A DEAL	or	THE NBC SUNDAY MYSTERY MOVIE (Columbo, McMillan & Wife, etc.)
* LAWRENCE WELK	or	MANNIX (Drama)
* HEE HAW	or	ABC SUNDAY MOVIE (Fiddler on the Roof, etc.)
* WHAT'S MY LINE	or	BORN FREE (Drama-Nature)
BOWLING FOR DOLLARS	or	GUNSMOKE (Drama)
* THE "NEW" PRICE IS RIGHT	or	THE ROOKIES (Drama)
* WILD KINGDOM	or	ADAM 12 (Drama)
* THE "NEW" NAME THAT TUNE	or	GOOD TIMES (Comedy, Black)
* "NEW" TREASURE HUNT	or	HAPPY DAYS (Comedy)
* CONCENTRATION	or	THE LITTLE HOUSE ON THE PRAIRIE (Historical Drama)
* CANDID CAMERA	or	SONS AND DAUGHTERS (Drama)
# WILD, WILD WORLD OF ANIMALS	or	THAT'S MY MAMA (Comedy, Black)

TOP 23 "ACCESS" BY ½ HR. CLEARANCE (Games underscored)		NETWORK ADJACENT TO ACCESS
* $25,000 PYRAMID	or	SIERRA (Nature-Drama)
# POLICE SURGEON	or	THE WALTONS (Drama)
# WORLD AT WAR	or	THE ODD COUPLE (Comedy)
* JEOPARDY	or	SANFORD AND SON (Comedy, Black)
LAST OF THE WILD	or	PLANET OF THE APES (Science Fiction)
DEALER'S CHOICE	or	KODIAK (Drama)
* MASQUERADE PARTY	or	EMERGENCY (Drama)
* CELEBRITY SWEEPSTAKES	or	ALL IN THE FAMILY (Comedy)
	or	NEW LAND (Historical Drama)

* Old or current U.S. network series

Foreign network

Table VIII analyzes each of '74-'75's "top 22" access shows, in many aspects. It offers the basis for direct evaluation of programming resulting from the rule; and allows comparison to new, independently-produced programming denied network distribution by the rule.

In '74-'75, the "top 22" access shows occupy 1161 half hours -- 86.6% of all access entertainment programming, and 55% of all access time programming (compared to 1137 network half hours in '70-'71, 54.1% of access time programming).

From 1972 through '74-'75 only 57 independently produced, new, high-quality programs could achieve regular once-a-week broadcast on the networks. 24 were given partial exposure and 276 were denied "access" altogether...out of 357 network pilots produced for network distribution.

20 of the "top 22" access entertainment shows were revived (see **) or foreign (see ##) network programs. 17 of the "top 22" are old network game shows, originally or still stripped.

Access' top 10 alone, filling 60.7% of the time, were available to the audience for cumulative totals of 133 years and about 18,000 non-access broadcasts.

Four producers (Goodson-Todman, Hatos-Hall, Ralph Edwards, and Heatter Quigley) produce shows that fill over 50% of all access entertainment half hours.

TABLE VIII

74-75 SEASON - TOP 22 ACCESS SHOWS

SHOWING:

- NETWORK REVIVALS FOR ACCESS
  - ** American
  - ## Foreign
- CURRENT NETWORK INTEREST
- LACK OF DIVERSITY

RANK	TITLE AND NETWORK KEY	TYPE PRODUCER FACILITIES DISTRIBUTOR	% OF SYNDICATED ACCESS ENTERTAINMENT	CUMULATIVE	CLEARANCE BY 1/2 HRS TELECAST	CUMULATIVE	CLEARANCE IN TOP 50 MARKETS	AVAILABLE WITH OR W/O PTAR	BROADCASTS (NETWORK OR SYNDICATION) WITHOUT PTAR	TOTAL YEARS OF U.S. BROADCAST BEFORE RULE	CUMULATIVE	NO. OF U.S. BROADCASTS (APPROX.) WITHOUT ACCESS	CUMULATIVE
1	**TO TELL THE TRUTH (Strip)	GAME Goodson-Todman NBC Facilities Firestone	11.5%	(11.5)	154	(154)	35	W/O	CBS Daytime Strip CBS Nighttime Weekly	17.3		2150	
2	**TRUTH OR CONSEQUENCES	GAME Ralph Edwards Metromedia Facilities Metromedia	11.0%	(22.5)	147	(301)	29	W/O	CBS Nighttime Weekly NBC Daytime Strip NBC Nighttime Weekly Syndication Strip	18.1	(35.4)	3950	(6100)
3	**HOLLYWOOD SQUARES NBC Daytime Strip & 2 Access Episodes)	GAME Heatter-Quigley NBC Facilities Rhodes Productions	7.3%	(29.8)	98	(399)	49	W/O	NBC Daytime Strip (Still on Network) NBC Nighttime Weekly	8.6	(44.0)	2040	(8140)

RANK	TITLE AND NETWORK KEY	TYPE PRODUCER FACILITIES DISTRIBUTOR	% OF SYNDICATED ACCESS ENTERTAINMENT	CUMULATIVE	CLEARANCE BY 1/2 HRS TELE CAST	CUMULATIVE	CLEARANCE IN TOP 50 MARKETS	AVAILABLE WITH OR W/O PTAR	BROADCASTS (NETWORK OR SYNDICATION) WITHOUT PTAR	TOTAL YEARS OF U.S. BROADCAST	CUMULATIVE	NO. OF U.S. BROADCASTS (APPROX.) WITHOUT ACCESS	CUMULATIVE
4	** LET'S MAKE A DEAL (ABC Daytime Strip & 2 Access Episodes)	GAME Hatos-Hall ABC Facilities Worldvision (ABC)	6.6%	(36.4)	89	(488)	49	W/O	ABC Daytime Strip (Still on Network) NBC Nighttime Weekly NBC Daytime Strip NBC Nighttime Weekly	13.8	(57.8)	2940	(11,080)
5	**LAWRENCE WELK	VARIETY Teleklew ABC Facilities Fedderson	4.8%	(41.2)	65	(553)	33	W/O	ABC Nighttime Weekly Local (L.A.) Nighttime Weekly	20.5	(78.3)	925	(12,005)
6	**HEE HAW	VARIETY Yongestreet	4.5%	(45.7)	60	(613)	32	W/O	CBS Nighttime Weekly	1.6	(79.9)	73	(12,078)
7	**WHAT'S MY LINE (Strip)	GAME Goodson-Todman NBC Facilities Viacom (CBS)	4.2%	(49.9)	56	(669)	13	W/O	CBS Nighttime Weekly Syndication Strip	20.4	(100.3)	1730	(13,808)

RANK	TITLE AND NETWORK KEY	TYPE PRODUCER FACILITIES DISTRIBUTOR	% OF SYNDICATED ACCESS ENTERTAINMENT	CUMULATIVE	CLEARANCE BY 1/2 HRS TELECAST	CUMULATIVE	CLEARANCE IN TOP 50 MARKETS	AVAILABLE WITH OR W/O PTAR	BROADCASTS (NETWORK OR SYNDICATION) WITHOUT PTAR	TOTAL YEARS OF U.S. BROADCAST	CUMULATIVE	NO. OF U.S. BROADCASTS (APPROX.) WITHOUT ACCESS	CUMULATIVE
8	BOWLING FOR $$	GAME FORMAT Claster Romper Room Ent.	3.7%	(53.6)	50	(719)	11	W/O	Syndication Strip (bowling programs)	5.0	(105.3)	1000	(14,808)
9	**"NEW" PRICE IS RIGHT (CBS Daytime Strip & (1 Access Episode)	GAME Goodson-Todman CBS Facilities Viacom (CBS)	3.7%	(57.3)	49	(768)	47	W/O	NBC Daytime Strip NBC Nighttime Weekly ABC Daytime Strip ABC Nighttime Strip CBS Daytime Strip (Still On Network)	18.2	(123.5)	3130	(17,938)
10	**WILD KINGDOM	NATURE/TRAVEL Don Meier/Foreign	3.4%	(60.7)	46	(814)	46	W/O	NBC Nighttime Weekly Syndication Weekly	9.3	(132.8)	240	(18,178)
11	**"NEW" NAME THAT TUNE (NBC Daytime Strip + 1 Access Episode)	GAME Ralph Edwards Ralph Edwards Sandy Frank	3.3%	(64.0)	44	(858)	44		NBC Nighttime Weekly CBS Nighttime Weekly	6.0	(138.8)	300	(18,478)

J3

RANK	TITLE AND NETWORK KEY	TYPE PRODUCER FACILITIES DISTRIBUTOR	% OF SYNDICATED ACCESS ENTERTAINMENT	CUMULATIVE	CLEARANCE BY 1/2 HRS TELECAST	CUMULATIVE	CLEARANCE IN TOP 50 MARKETS	AVAILABLE WITH OR W/O PTAR	BROADCASTS (NETWORK OR SYNDICATION) WITHOUT PTAR	TOTAL YEARS OF U.S. BROADCAST	CUMULATIVE	NO. OF U.S. BROADCASTS (APPROX.) WITHOUT ACCESS	CUMULATIVE
12	**"NEW" TREASURE HUNT	GAME Chuck Barris ABC Facilities Sandy Frank	3.1%	(67.1)	41	(899)	39	W/O	ABC Nighttime Weekly NBC Nighttime Weekly NBC Daytime Strip	4.0	(142.8)	655	(19,133)
13	**CONCENTRATION (Strip)	GAME Goodson-Todman NBC Financial Interest NBC Facilities Victory Dist.	2.7%	(69.8)	36	(935)	10	W/O	NBC Daytime Strip NBC Nighttime Weekly	16.0	(158.8)	4125	(23,258)
14/15	**CANDID CAMERA	MISCELLANEOUS Allan Funt CBS Facilities Firestone	2.5%	(72.3)	33	(968)	33	W/O	ABC Nighttime Weekly NBC Nighttime Weekly CBS Nighttime Weekly CBS Daytime Strip Syndication Weekly	19.0	(177.8)	1850	(25,108)
14/15	##WILD WILD WORLD OF ANIMALS	NATURE/TRAVEL Time-Life/BBC Mainly Foreign Time-Life	2.5%	(74.8)	33	(1001)	32	Mainly W/O	Mainly Foreign Network	-		-	

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RANK	TITLE AND NETWORK KEY	TYPE PRODUCER FACILITIES DISTRIBUTOR	% OF SYNDICATED ACCESS ENTERTAINMENT	CUMULATIVE	CLEARANCE BY 1/2 HRS TELECAST	CUMULATIVE	CLEARANCE IN TOP 50 MARKETS	AVAILABLE WITH OR W/O PTAR	BROADCASTS (NETWORK OR SYNDICATION) WITHOUT PTAR	TOTAL YEARS OF U.S. BROADCAST	CUMULATIVE	NO. OF U.S. BROADCASTS (APPROX.) WITHOUT ACCESS	CUMULATIVE
16	**$25,000 PYRAMID (ABC Daytime Strip + 1 Access Episode)	GAME Viacom ABC Facilities Viacom	2.3%	(77.1)	31	(1032)	31	W/C	CBS Daytime Strip ABC Daytime Strip	1.0	(178.8)	250	(25,358)
17	##POLICE SURGEON	DRAMA Four Star/Foreign CTV Facilities Four Star	2.2%	(79.3)	29	(1061)	29	W/O	Canadian TV Network	-		-	
18	##WORLD AT WAR	MISCELLANEOUS Thames TV Gottlieb/Taffner	1.9%	(81.2)	26	(1087)	17	W/O	Foreign Network	-		-	
19	**JEOPARDY NBC Daytime Strip + 1 Access Episode	GAME Griffin: Rubin NBC Facilities NBC (Worldwide)	1.9%	(83.1)	25	(1112)	25	W/O	NBC Daytime Strip NBC Nighttime Weekly	9.5	(187.8)	2375	(27,733)
20	LAST OF THE WILD	NATURE/TRAVEL Ivan Tors; Heritage Young & Rubicam	1.3%	(84.4)	17	(1129)	17	W		-		-	

RANK	TITLE AND NETWORK KEY	TYPE PRODUCER FACILITIES DISTRIBUTOR	% OF SYNDICATED ACCESS ENTERTAINMENT	CUMULATIVE	CLEARANCE BY 1/2 HRS TELECAST	CUMULATIVE	CLEARANCE IN TOP 50 MARKETS	AVAILABLE WITH OR W/O PTAR	BROADCASTS (NETWORK OR SYNDICATION) WITHOUT PTAR	TOTAL YEARS OF U.S. BROADCAST	CUMULATIVE	NO. U.S. BROADCASTS (APPROX.) WITHOUT ACCESS	CUMULATIVE
21/22	DEALER'S CHOICE	GAME Fishman & Freer CPT	1.2%	(85.6)	16	(1145)	8	W	-	-		-	
21/22	**MASQUERADE PARTY	GAME Hatos-Hall NBC Facilities 20th Century Fox	1.2%	(86.8)	16	(1161)	16	W/O	NBC Nighttime Weekly ABC Nighttime Weekly	10	(197.8)	500	(28,233)
SUBTOTAL TOP 22 ACCESS SHOWS				86.8%*		1161							
+ ALL OTHER ACCESS SHOWS				13.2		180							
GRAND TOTAL ACCESS ENTERTAINMENT				100.0%		1341							

* Rounded

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Consideration of the operation of, and possible changes in, the "prime time access rule," Section 73.658 (k) of the Commission's Rules	)))))))	Docket No. 19622

SUPPLEMENTAL JOINT APPENDIX OF:

Columbia Pictures Television
MCA Inc.
MGM Television
Twentieth Century Fox
United Artists
Warner Bros. Television

October 10, 1974

CONTENTS.

TABLE I

LOCAL PUBLIC AFFAIRS PROGRAMMING IN ACCESS TIME FOR THE TOP 50 MARKETS*
(Programs Devoted to Minority Affairs Where Indicated)

	ABC AFFILIATES		CBS AFFILIATES		NBC AFFILIATES		TOTAL	
MARKETS (Ordered by Size)	Available 1/2 Hrs. (Weekly)	Local Affairs 1/2 Hrs. (Weekly)	Available 1/2 Hrs. (Weekly)	Local Affairs 1/2 Hrs. (Weekly)	Available 1/2 Hrs. (Weekly)	Local Affairs 1/2 Hrs. (Weekly)	Available 1/2 Hrs. (Weekly)	Local Affairs 1/2 Hrs. (Weekly)
1. New York	14	1	14	1	14	1	42	3
2. Los Angeles	14	2 (1 Minority Affairs)	14	1	14	1	42	4
3. Chicago	14	1	14	1	14	1	42	3
4. Philadelphia	14	1 (Minority Affairs)	14	1	14	1	42	3
5. Boston	14	5	14	2	14	2 (1 Minority Affairs)	42	9
6. San Francisco	14	1	14	1	14	1	42	3
7. Detroit	14	1 (Minority Affairs)	14	0	14	1 (Minority Affairs)	42	2
8. Cleveland	14	1 (Minority Affairs)	14	2 (1 Minority Affairs)	14	1	42	4

* Exclusive of Local Sports, News, and Entertainment.

TABLE I

MARKETS (Ordered by Size)	ABC AFFILIATES Available 1/2 Hrs. (Weekly)	ABC AFFILIATES Local Affairs 1/2 Hrs. (Weekly)	CBS AFFILIATES Available 1/2 Hrs. (Weekly)	CBS AFFILIATES Local Affairs 1/2 Hrs. (Weekly)	NBC AFFILIATES Available 1/2 Hrs. (Weekly)	NBC AFFILIATES Local Affairs 1/2 Hrs. (Weekly)	TOTAL Available 1/2 Hrs. (Weekly)	TOTAL Local Affairs 1/2 Hrs. (Weekly)
9. Washington, D.C.	14	2	14	2	14	2 (1 Minority Affairs)	42	6
10. Pittsburgh	14	1 (Minority Affairs)	14	2	14	1	42	4
11. Dallas/Ft. Worth	14	2	14	3	14	0	42	5
12. St. Louis	14	0	14	0	14	0	42	0
13. Minneapolis/St. Paul	14	0	14	1	14	0	42	1
14. Houston	14	0	14	0	14	1	42	1
15. Miami	14	3	14	1	14	0	42	4
16. Atlanta	14	2 (1 Minority Affairs)	14	1	14	0	42	3
17. Seattle	14	2	14	0	14	0	42	2
18. Indianapolis	14	0	14	1	14	1	42	2
19. Baltimore	14	1	14	0	14	1	42	2
20. Tampa/St. Petersburg	14	0	14	1	14	1	42	2
21. Hartford/New Haven	14	1	14	3	14	1	42	5
22. Kansas City	14	0	14	0	14	0	42	0
23. Cincinnati	14	0	14	1	14	0	42	1

TABLE I

MARKETS (Ordered by Size)	ABC AFFILIATES Available 1/2 Hrs. (Weekly)	ABC AFFILIATES Local Affairs 1/2 Hrs. (Weekly)	CBS AFFILIATES Available 1/2 Hrs. (Weekly)	CBS AFFILIATES Local Affairs 1/2 Hrs. (Weekly)	NBC AFFILIATES Available 1/2 Hrs. (Weekly)	NBC AFFILIATES Local Affairs 1/2 Hrs. (Weekly)	TOTAL Available 1/2 Hrs. (Weekly)	TOTAL Local Affairs 1/2 Hrs. (Weekly)
24. Milwaukee	14	2	14	1	14	1	42	4
25. Sacramento	14	0	14	1	14	3	42	4
26. Portland	14	2	14	1	14	0	42	3
27. Providence	14	0	14	0	14	0	42	0
28. Buffalo	14	1	14	1	14	1	42	3
29. Denver	14	0	14	0	14	0	42	0
30. Nashville	14	0	14	0	14	0	42	0
31. Columbus	14	0	14	3	14	1	42	4
32. Memphis	14	2	14	1	14	2	42	5
33. San Diego	14	0	14	0	14	1	42	1
34. Charlotte	14	1	14	2	14	1	42	4
35. New Orleans	14	0	14	0	14	1	42	1
36. Louisville	14	0	14	1	14	0	42	1
37. Phoenix	14	1	14	0	14	1	42	2
38. Grand Rapids/Kalamazoo	14	0	14	2	14	1 (Minority Affairs)	42	3
39. Oklahoma City	14	0	14	0	14	1	42	1
40. Greenville/Spartanburg	14	0	14	1	14	0	42	1

TABLE I

MARKETS (Ordered by Size)	ABC AFFILIATES: Available 1/2 Hrs. (Weekly)	ABC AFFILIATES: Local Affairs 1/2 Hrs. (Weekly)	CBS AFFILIATES: Available 1/2 Hrs. (Weekly)	CBS AFFILIATES: Local Affairs 1/2 Hrs. (Weekly)	NBC AFFILIATES: Available 1/2 Hrs. (Weekly)	NBC AFFILIATES: Local Affairs 1/2 Hrs. (Weekly)	TOTAL: Available 1/2 Hrs. (Weekly)	TOTAL: Local Affairs 1/2 Hrs. (Weekly)
41. Dayton	14	4	14	0	14	0	42	4
42. Albany	14	0	14	1	14	1	42	2
43. Charleston/Huntington	14	0	14	1	14	1	42	2
44. Wilkes Barre/Scranton	14	0	14	0	14	0	42	0
45. Greensboro/Winston-Salem	14	0	14	1	14	1	42	2
46. Norfolk/Portsmouth	14	0	14	1	14	1	42	2
47. Orlando	14	0	14	1	14	0	42	1
48. Birmingham	14	0	14	0	14	0	42	0
49. Salt Lake City	14	0	14	0	14	0	42	0
50. San Antonio	14	0	14	1	14	0	42	1
TOTALS	700	40	700	45	700	35	2,100	120

TOTAL NUMBER OF WEEKLY LOCAL PUBLIC AFFAIRS HALF HOURS OUT OF THE 2,100 ACCESS HALF HOURS AVAILABLE EACH WEEK 120

TOTAL NUMBER OF WEEKLY MINORITY AFFAIRS HALF HOURS OUT OF THE 2,100 ACCESS HALF HOURS AVAILABLE EACH WEEK 11

TABLE II

O&O CONTROL OF ACCESS HALF HOURS : NBC
(Including Only Those Programs Bought In Three Or More Markets)

ACCESS SEASON	NEW YORK	CHICAGO	LOS ANGELES	WASHINGTON, D.C.	CLEVELAND
1971	Hollywood Squares Monty Nash Primus National Geographic Lassie Dr. Simon Locke Wild Kingdom	Hollywood Squares Monty Nash Primus National Geographic Lassie Dr. Simon Locke Wild Kingdom	Hollywood Squares Monty Nash Primus National Geographic Lassie Dr. Simon Locke Wild Kingdom	Hollywood Squares Monty Nash Primus National Geographic Lassie Dr. Simon Locke Wild Kingdom	Hollywood Squares Monty Nash Primus National Geographic Lassie Dr. Simon Locke Wild Kingdom
1972	Hollywood Squares Wait Till Father Gets Home Price is Right Adventurer Mouse Factory Police Surgeon Wild Kingdom	Hollywood Squares Wait Till Father Gets Home Price is Right Adventurer Mouse Factory Police Surgeon Wild Kingdom	Hollywood Squares Wait Till Father Gets Home Price is Right Adventurer Mouse Factory Police Surgeon Wild Kingdom	Hollywood Squares Wait Till Father Gets Home Price is Right Adventurer Mouse Factory Police Surgeon Wild Kingdom	Hollywood Squares Wait Till Father Gets Home Price is Right Adventurer Mouse Factory Police Surgeon Wild Kingdom
1973	Hollywood Squares Price is Right Star Lost Police Surgeon Wild Kingdom	Hollywood Squares Price is Right Star Lost Police Surgeon Wild Kingdom	Hollywood Squares Price is Right Star Lost Police Surgeon Wild Kingdom	Hollywood Squares Price is Right Star Lost Police Surgeon Wild Kingdom	Hollywood Squares Price is Right Star Lost Police Surgeon Wild Kingdom
1974	Hollywood Squares Price is Right Name That Tune Wild Kingdom Jeopardy	Hollywood Squares Price is Right Name That Tune Wild Kingdom	Hollywood Squares Price is Right Name That Tune Wild Kingdom Jeopardy	Hollywood Squares Price is Right Name That Tune Wild Kingdom Jeopardy	Hollywood Squares Price is Right Name That Tune Wild Kingdom Jeopardy

TABLE II

O&O CONTROL OF ACCESS HALF HOURS : CBS
(Including Only Those Programs Bought In Three Or More Markets)

ACCESS SEASON	NEW YORK	CHICAGO	LOS ANGELES	PHILADELPHIA	ST. LOUIS
1971	Stand Up and Cheer	Stand Up and Cheer	Stand Up and Cheer	Stand Up and Cheer	Stand Up and Chee:
	Golddiggers	Golddiggers	Golddiggers	Golddiggers	Golddiggers
	Circus	Circus	Circus	Circus	Circus
	Dr. In The House	Dr. In The House	Dr. In The House	Dr. In The House	
	David Frost	David Frost	David Frost		
		Rollin' River	Rollin' River	Rollin' River	Rollin' River
	Jerry Visits		Jerry Visits	Jerry Visits	
1972	Stand Up and Cheer	Stand Up and Cheer	Stand Up and Cheer	Stand Up and Cheer	Stand Up and Chee
	Golddiggers	Golddiggers	Golddiggers	Golddiggers	Golddiggers
	Circus	Circus	Circus	Circus	Circus
	Protectors	Protectors	Protectors	Protectors	Protectors
	I've Got A Secret	I've Got A Secret	I've Got A Secret	I've Got A Secret	I've Got A Secret
	Young Dr. Kildare	Young Dr. Kildare	Young Dr. Kildare		
	UFO		UFO	UFO	
1973	Orson Welles' Great Mysteries	Orson Welles' Great Mysteries	Orson Welles' Great Mysteries	Orson Welles' Great Mysteries	
	Dusty's Trial		Dusty's Trial	Dusty's Trial	Dusty's Trial
	Protectors		Protectors	Protectors	Protectors
	Jonathan Winters		Jonathan Winters	Jonathan Winters	
		Dating Game	Dating Game	Dating Game	
	Johnny Mann		Johnny Mann		Johnny Mann
1974	$25,000 Pyramid		$25,000 Pyramid		$25,000 Pyramid
	Masquerade Party		Masquerade Party	Masquerade Party	
	Last of the Wild		Last of the Wild	Last of the Wild	Last of the Wild
	Protectors	Protectors			Protectors
	Candid Camera		Candid Camera	Candid Camera	

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TABLE II

O&O CONTROL OF ACCESS HALF HOURS : ABC
(Including Only Those Programs Bought In Three Or More Markets)

ACCESS SEASON	NEW YORK	CHICAGO	LOS ANGELES	DETROIT	SAN FRANCISCO
1971	Let's Make A Deal This Is Your Life	Let's Make A Deal This Is Your Life	Let's Make A Deal This Is Your Life	Let's Make A Deal	Let's Make A Deal
1972	Parent Game Let's Make A Deal George Kirby	Parent Game Let's Make A Deal George Kirby	Parent Game	Parent Game Let's Make A Deal George Kirby	
1973	Let's Make A Deal Ozzie's Girls	Let's Make A Deal Ozzie's Girls	Let's Make A Deal	Let's Make A Deal Ozzie's Girls	Let's Make A Deal
1974	Let's Make A Deal Celebrity Sweepstakes	Let's Make A Deal Celebrity Sweepstakes	Let's Make A Deal Celebrity Sweepstakes	Let's Make A Deal Celebrity Sweepstakes	Let's Make A Deal Celebrity Sweepstak

TABLE III

AN ANALYSIS OF THE NATIONAL BALCK MEDIA COALITION'S APPENDIX A ENTITLED: "EXAMPLES OF LOCAL PRIME TIME PROGRAMMING NEGOTIATED BY CITIZENS' GROUPS SINCE PTAR"*

	From Appendix A of NBMC	ANALYSIS AND COMMENTS
Syracuse, New York	Syracuse Coalition for the Free Flow of Information has produced several half-hour and hour specials aired on prime time.	NOT ONE OF THE TOP 50 MARKETS COVERED BY PTAR.
Charlotte, North Carolina	WSOC-TC (NBC) agreed to air documentaries on women's issues on prime time.	WSOC AIRS ONE HALF HOUR OF GENERAL INTEREST AFFAIRS, SUN. 10:30 P.M. NO WOMEN'S SHOWS IN ACCESS OR OTHER PRIME TIME.
Detroit, Michigan	WXYZ-TV (ABC) filed agreement to air a minimum of 1-1/2 hours per month on prime time relevant to women's issues.	WXYZ AGREED TO AIR 90 MINUTES PER YEAR ON WOMEN'S ISSUES, NOT IN ACCESS OR OTHER PRIME TIME.
Memphis, Tennessee	Memphis Women's Media Project WREC-TV (CBS) agreed to air a feminist public affairs program in prime time at least once a month.	WREC AGREED TO AIR FOUR HALF HOURS PER YEAR OF WOMEN'S AFFAIRS SHOWS, WITH NO PROVISION OF ACCESS OR PRIME TIME EXPOSURE.
Denver, Colorado	Colorado Coalition of Women and Minorities.	
	KOA-TV (NBC): 1/2 hour prime time programming per month for black, Chicano, women's view.	KOA'S MINORITY INTEREST PROGRAMS ARE NOT AIRED IN ACCESS OR PRIME TIME BUT MID-AFTERNOON ON SATURDAYS (2-3).
	KMGH-TV (CBS): Same schedule as KOA-TV with additional variety programs programmed for 1 hour every three months.	KMGH SHOWS ITS MINORITY PROGRAMS, 2 HALF HOURS PER MONTH, SAT. 5:30-6.
	KBTV (ABC): One hour per month on prime time.	

* NBMC Comments of September 20, 1974.

	From Appendix A of NBMC	ANALYSIS AND COMMENTS
Austin, Texas	Austin Television Action Council and Austin Black Media Coalition.	
	KTBC (CBS): Minimum of 10 documentaries during 1974, 4 to be scheduled on prime time.	NOT ONE OF THE TOP 50 MARKETS COVERED BY PTAR.
	KTVV (NBC): Complete financial underwriting of 30 minute documentaries; 6 of which are to deal with black probelsm in Austin, 3 of which must be produced and aired in 1974; all prime or fringe prime time.	
Weslaco, Texas	Rio Grande Valley Coalition on Mass Media. KRGV-TV (NBC/ABC) agreed to present minimum of one 30 minute prime time program per month on locally ascertained needs, every other month in Spanish.	NOT ONE OF THE TOP 50 MARKETS COVERED BY PTAR.
San Diego, California	KCST-TV (ABC) agreed to air 2 local weekday prime time public affairs programs of which 25% would be devoted to "minority culture, problems, interests and achievements, and women's activities, progress and accomplishments," including those of minority women.	KCST AIRS NO REGULAR PUBLIC AFFAIRS SHOWS IN ACCESS OR OTHER PRIME TIME. THE ONLY SUCH SHOW APPEARS ON SUNDAY AFTERNOON, 2-3 P.M.
Harlingen, Texas	Rio Grande Coalition on Mass Media. KGBT-TV (CBS/ABC) agreed to present annually at least 12 locally produced prime time public affairs programs, at least a half-hour in length. At least four of these would be in Spanish -- one on health, one on education, one on consumer problems, and one on cultural identity and pride.	NOT ONE OF THE TOP 50 MARKETS COVERED BY PTAR.
East Lansing, Michigan	Citizens United for Better Broadcasting and Lansing Committee for Children's Television. WJIM-TV (CBS) agreed to produce a weekly 30-minute prime time local public affairs program, and periodic local prime time children's specials.	NOT ONE OF THE TOP 50 MARKETS COVERED BY PTAR.

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	From Appendix A of NBMC	ANALYSIS AND COMMENTS
Rochester, New York	Rochester Petitioners and Supporters, now Rochester Black Media Coalition. WROC-TV agreed to monthly broadcast of community produced minority program, one half hour, called "Challenge" on prime access slot. Adam-12 is pre-empted.	NOT ONE OF THE TOP 50 MARKETS COVERED BY PTAR.
New York, New York	Black Citizens for a Fair Media. WNBC-TV: 50 percent of prime time documentary series New York Illustrated to be geared to specifically ascertained needs of minority communities, particularly the Black community. Agreed to prime time specials on minority concerns.	NEW YORK ILLUSTRATED IS ONE HALF HOUR PER WEEK AT 10:30 - 11 P.M. NO SPECIALS ARE IN PRODUCTION.
El Paso, Texas	KROD-TV (CBS): Six half-hour prime time specials produced for the Chicano community.	NOT ONE OF THE TOP 50 MARKETS COVERED BY PTAR.
Odessa, Texas	KOSA-TV (CBS): Six half-hour prime time specials produced for the Chicano community.	NOT ONE OF THE TOP 50 MARKETS COVERED BY PTAR.
Houston, Texas	KTRK-TV has agreements with Black Citizens for Media Access and Chicano Communications Council for prime time documentaries on minority concerns.	NO HALF HOURS ON MINORITY AFFAIRS ARE PLANNED FOR ACCESS PERIOD AIRING IN THE 1974-75 SEASON. IN FACT, KTRK AIRS NO REGULAR PUBLIC AFFAIRS PROGRAMS OF ANY SORT IN ACCESS.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	Docket No. 19622
	)	
Consideration of the operation of, and possible changes in, the "prime time access rule," Section 73,658 (k) of the Commission's Rules	)	

FURTHER SUPPLEMENTAL APPENDIX

CONTAINING:

1. Public Criticism of the Burden Imposed by the Prime Time Access Rule - As Expressed by TV Critics.

2. "Qualified" Prime Time Producers: Those Who Produce Network Series in 4th Quarter of 1974; and Those Who Do Not, but are Available to the Shrunken Marketplace.

3. Reports of the Cost/Price Squeeze Faced by Producers and Intensified by the Prime Time Access Rule.

Columbia Pictures Television
MCA Inc.
MGM Television
Twentieth Century Fox
United Artists
Warner Bros. Television

PREFACE

1. In view of the Commission's desire to "hear from the public," the comments of television editors and critics should be pertinent. They are reasonably objective, disinterested experts on the diversity and quality of programming.

2. Injury to independent producers is documented by the list of producers of drama and comedy who are not now regularly represented in prime time. Of course, many factors influence the choice of program and producers--but the extremely long list of qualified and "successful" independent prime time producers indicates how the rule has exacerbated, not helped, the opportunities for independently produced new programming. Also of interest is the list of 15 producers labeled in the Commission's original Report and Order(May, 1970)as reliable sources of programming and their fates under the access rule.

3. The profound cost/price squeeze faced by network producers, intensified by the rule, as reported in several current articles.

We hope these data are helpful to you in evaluating the access rule.

TELEVISION EDITORS AND CRITICS REJECT THE PTAR:

A CONTINUOUS RECORD

Speakers for the public interest in the nation's leading newspapers and journals have been unanimous in their condemnation of the rule's disastrous effects.

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DICK ADLER of The Los Angeles Times, 9/20/74

"As anyone but the half-dozen game show tycoons who regularly meet in a telephone booth to file petitions will admit, the experiment has been a dismal failure. Just how progressively dismal I didn't realize until I began to sample the new season's so-called 'Access slot' programs.

I used to be able to let my eyes drift up occasionally from the delights of reading and catch moments of moderate wit on The Wacky World of Jonathan Winters. The raspy voice of Jack Burns on Wait Till Your Father Gets Home would snap me out of a preprandial doze from time to time. Even Orson Welles' Great Mysteries would on occasion manage to send a Suspense-type chill down my slumped spine. Those modest pleasures are gone now, replaced by blubbering matrons ready to sell their soul for a microwave oven.

At 7:30 this season, children anxious for a glimpse of what their parents are up to after they've been put to bed can watch Jeopardy, To Tell the Truth, The New Treasure Hunt, Celebrity Sweepstakes, The New Price Is Right, The $25,000 Pyramid, Name That Tune, Masquerade Party, Let's Make A Deal (twice) and Hollywood Squares (twice)."

****

BOB WILLIAMS of The New York Post, 9/19/74

"We've said it before, and we say it again. All the FCC did in reducing the network programming was to give local station operators an opportunity to rake in more dough. While some of the syndicated game shows they bought to fill the time may be good, they don't satisfy the FCC's purpose. The FCC wanted diversified programs in which the local station operators would offer TV of some local value...

It has been our argument that the local TV station operators virtually ignored the FCC opportunity to program for their localities."

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LARRY MICHIE of Variety, 8/28/74

"A vivid illustration of the failure of the FCC's primetime access rule is provided by the network flagship stations in New York. As the accompanying chart shows, the three rich outlets will be showing a total of two half-hours per week of local programming in the access slot this season...

If any market in the country can afford to try diverse programming and local production, it is New York. The three network affiliates are all owned by the corporate umbrellas and should be acutely sensitive to the encouragement of the FCC to turn to new program sources. All three stations also have more dollars than Abe Beame has problems."

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GERALD ASTOR of <u>The New York Times</u>, 8/4/74

"The absence of the elderly is particularly noticeable in prime-time entertainment, where the accent is definitely on youth...

Next season will be no better, at least for a while. CBS had scheduled a series called The Love Nest for a September premiere, but the show was put off until January when the FCC cut the networks' prime-time allotment by half an hour. A pity, because The Love Nest might have brought some more old folks, realistically depicted to television."

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L. LAURENT of <u>The Washington Post</u>, 7/14/74

"The idea was to get some other creative forces into TV and, surely, with more time available, program producers would rush forth with high quality productions. Or at least local ones.

It is a rule of noble intend. And, first, let the point be made that one of its aims has been achieved -- additional companies have been able to get programs into schedules where only networks could play. Once that is noted, the rule has been a cultural disaster.

Except for those people who look upon Truth or Consequences as culturally important. Except for those viewers who regard The Price Is Right as a forward step in the history of TV programming."

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CYCLOPS of The New York Times, 6/30/74

"We have tried it now for two years. The results have been less than edifying. Instead of programming for their communities, the local stations have plugged up the holes in their schedules with syndicated game shows and network retreads."

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KAY GARDELLA of The New York Daily News, 6/25/74

"The original aim of the prime time rule, which went into effect three years ago, was to weaken network domination of evening television time. It also was conceived to give independent television producers and distributors a chance to show what they could do. Generally, we were inundated with game shows and other junk except for series like Hee Haw that went into syndication and had a loyal following. But one can hardly rank that with National Geographic specials, and a host of other top-drawer children's programs that were in the beginning stages of production here in Los Angeles and were aimed at the early Saturday and Sunday periods on the networks."

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CLEVELAND AMORY of TV Guide. See testimony at FCC oral arguments, July 31, 1973

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EDITORIAL, TV Guide, 3/10/73

"The FCC is now beginning an examination of the rule with a view to changing or rescinding it. The reason is simple: the rule is a failure.

It was intended to open up television -- give viewers more variety, give new program ideas a chance, and loosen the domination of New York and Hollywood. But with the rule in its second year, New York and Hollywood still make the vast majority of the programs. And the hoped-for variety and bright new ideas haven't materialized.

The access-time half hour has become a dumping ground for remakes of network castoffs. Of the five most widely distributed access-time series, all are remakes: To Tell the Truth, Truth or Consequences, What's My Line?, Hee Haw and Lawrence Welk. Eight of the top 10 are remakes; 14 of the top 20. Nine are also game shows; one is a cartoon. The networks aren't noted for innovation, but they can do better than that."

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RICHARD K. DOAN, TV Guide, 1/27/73

"A season and a half later, the rule has become a regulatory quagmire, almost wholly counterproductive as a creative stimulant, highly discriminatory in its industry impact, and hopelessly inflexible as a guideline.

Specifically, it has led to an appalling proliferation of cheaply produced game shows and revivals of long-gone network attrations...

But while that may be the worst of it from the viewers' viewpoint, there is a graver consequence to the relationship of government and broadcasting. 'There's no question we're in the programming business,' says FCC Chairman Dean Burch, who has received a deluge of requests for waivers to the rule -- for the Miss America Pageant, the Summer Olympics, among others. The Commission has found itself slowly but surely being dragged into direct involvement in programming, a role the FCC historically has sought to steer clear of.

There have been side effects, too. Many stations are cramming up to six and a half minutes of commercials into the access half hour where the networks had only four...

How could the FCC have failed to foresee some, if not all, of these outgrowths of the rule?

That's what a lot of people in TV wonder, too.

Especially in view of the fact that Prime-Time Access, far from being an overnight regulatory concoction, was the culmination of a massive 10-year study of network 'programming practices.'

(RICHARD K. DOAN, cont'd.)

It all turned out so badly, it appears, because a majority of the FCC members overestimated broadcasters. They seemed to believe that local TV managements would provide better, more diversified programming if only they had the opportunity.

The business, of course, doesn't work that way.

When the networks gave up 7:30 - 8 P.M. (ET) each evening, their 50 biggest outlets (the only ones ordered to abide by the rule) did what came naturally. With rare exceptions, they hurried out and filled the time slot with the shows that would get the biggest audiences.

Abashed by the low-grade fare that their own ruling has encouraged, the FCC has eagerly granted waivers to the sort of programs they had hoped to encourage in the first place...

Chairman Burch's feeling is that his fellow commissioners face a basic question. 'They've got to decide,' he says, 'what it is they're trying to accomplish.' If it's more locally produced programming, he suggests, 'then perhaps we'd better say so.' "

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Time, 2/5/73

"In the 16 months the regulation has been in effect, it has been an almost perfect boomerang. Instead of promoting original programming, it has sent the local station managers scurrying to producers who imitate hits of the past. Instead of promoting TV production round the country, it has been a boon to Canadian and British producers, who can usually deliver programs for much less than their American counterparts.

Adding to the burden on the viewer -- the inevitable victim -- the rule has even served to multiply commercials. When the networks had control of the time, they allowed only three minutes for the hard sell each half-hour; local station- are raising that to five...

Cheap game shows have proliferated, and shows that the networks once discarded such as The Lawrence Welk Show and Hee Haw, have been resuscitated...

The depressing evidence of the prime-time access rule is that the decisions of several hundred program directors are no better -- are indeed worse -- than those of three."

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JAMES MacGREGOR of The Wall Street Journal, 11/24/72

"Hee Haw, What's My Line, This Is Your Life, Lawrence Welk, To Tell the Truth.

That sounds like a list of television hits of yester-year. It is.

It is also a list of television hits of today, thanks to (some say by order of) the Federal Communications Commission. Each of these shows, its long network career finished, appeared destined for relative obscurity. Then, just over a year ago, the FCC implemented Rule 73.658(k) also known as the 'prime-time access rule.' "

LES BROWN of Variety, 9/13/72

"Sometimes it's hard to tell where the FCC has been clumsiest -- in the conception of the prime-time access rule, or in the administration of it. As the bumbling goes on, it becomes suddenly apparent that the commission has put itself -- hence the government -- in a position where neither government nor one of its agencies ought to be, namely, in the tv programming business...

The argument here is not to demand that the FCC bar ersatz features made for video but rather to point out that the rule itself is unwieldly and that the enforcement of it can never be equitable and just if, as one victim put it, 'the FCC has to decide on every sunrise and sunset and whether a game may be allowed to go into extra innings.'

The commission's enormous contribution to the failure of the rule through its exemptions and waivers makes it hard to tell whether prime access is a bust on its own or whether it's the FCC's zany arbitration that makes it seem so.

Up to a point it's comical. But the FCC's real involvement in programming through its judgments of what is worthy of station time -- on top of Congressional presumption-to determine what may be advertised and what is permissible as violence, and the fear tactics employed by the Executive branch to keep the news in line with its own purposes -- makes all talk of a free broadcasting system in America seem empty rhetoric.

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(LES BROWN, cont'd.)

Obviously, there is a legitimate basis for government concern over the effect of television on the society, and over the greed that is responsible for too little conscience in the industry. It is a serious matter that those who have been given the right to run television in America don't aspire to realize what is possible in the medium beyond the maximum profit. But for government to take the matter into its own hands is not what is meant by regulation or democracy.

Besides, pragmatically, any government entity that starts making television programming decisions runs the political risk -- like the FCC -- of falling on its face."

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JOHN O'CONNOR of The New York Times, 9/3/72

"That was the theory. In practice, this past first year and in the schedule for the second year coming up, the theory has been severely battered.

Among the more successful of the syndicated programs the determined viewer could find a slew of formats based on former network or daytime shows: Let's Make a Deal, To Tell The Truth, Truth or Consequences, What's My Line? Among those returning this season: I've Got a Secret and The Price Is Right. One result is that new opportunities for independent producers have been negligible as this type of program inventory merely replaces what producers would hav- provided anyway via the networks."

"QUALIFIED" PRIME TIME PRODUCERS: THOSE WHO PRODUCE NETWORK SERIES IN 4TH QUARTER OF 1974; AND THOSE WHO DO NOT, BUT ARE AVAILABLE TO THE SHRUNKEN MARKETPLACE

PRODUCTION SOURCES, CURRENTLY ON NETWORK PRIME-TIME

Network Internal Production

ABC
CBS
LEONARD FREEMAN PRODUCTIONS (CBS)
NBC

Independent Producers

COLUMBIA PICTURES TELEVISION
MCA-TV (UNIVERSAL TELEVISION)
MGM TELEVISION
PARAMOUNT TELEVISION
WARNER BROS. TELEVISION
TWENTIETH CENTURY FOX TELEVISION

ALFRA PRODUCTIONS*
BLYE/BEARDE PRODS.*
CULZEAN PRODS.*
WALT DISNEY PRODS.
D'ANTONI/WEITZ
DAVID GERBER PRODS.*
GROVERTON PRODS.*
HARBOUR PRODS.*
KODIAK PRODS.
KOMACK CO.
LORIMAR PRODS.
MARK VII PRODS.*
MTM PRODS.
MILLER/MILKIS
PUBLIC ARTS/CHEROKEE
PUNKIN PRODS.
QUINN MARTIN PRODS.
SPELLING/GOLDBERG
TALENT ASSOCIATES*
TANDEM PRODS.
DAVID WOLPER PRODS.

*In association with a studio company for purposes of deficit financing, facilities, and/or syndication.

ORDER, ADOPTED MAY 4, 1970...

"Other factors...reinforce our view that the market is seriously unbalanced to the disadvantage of independent producers and a freer, more diversified television production and distribution process... Whatever their number, independent producers are seriously disadvantaged by the market structure... the ADL report lists 15 packagers as participating in all seasons, 1957 - 1964, by supplying at least one regularly scheduled network series for nighttime television. While in the normal course of competitive business, these producers might be expected to acquire a favorable or preferred bargaining position because of their economic and creative contributions and their desirability as sources of network programs, such was not the case."

HOW HAS THE ACCESS RULE AFFECTED THE 15, CONSISTENTLY SUCCESSFUL 1957-1964?:

	PRODUCTION SOURCE *	'74-'75 REPRESENTATION
1.	DAVID SUSSKIND (TALENT ASSOCIATES)	Once monthly
2.	DESILU PRODUCTIONS	Out of business (acquired by Paramount)
3.	FOUR STAR TELEVISION	No prime time
4.	GOODSON-TODMAN	Dominant access producer; dominant daytime network producer.
5.	JACK WRATHER PRODUCTIONS	Out of business (denied access waiver for LASSIE)
6.	J & M PRODUCTIONS	No prime time
7.	OSWALD AND HARRIET NELSON	No prime time
8.	REVUE STUDIOS	Now MCA-Universal
9.	RONCOM PRODUCTIONS	No prime time
10.	SCREEN GEMS	Now Columbia Pictures Television
11.	SHAMLEY PRODUCTIONS	No prime time
12.	SULLIVAN PRODUCTIONS	No prime time
13.	TELEKLEW PRODUCTIONS, INC.	No prime time
14.	WARNER BROS. PICTURES, INC.	Represented
15.	WALT DISNEY PRODUCTIONS	Represented.

* Footnote 14.

REPORTS OF THE COST/PRICE SQUEEZE FACED BY PRODUCERS AND INTENSIFIED BY THE PRIME TIME ACCESS RULE

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ADDITIONAL UNUTILIZED INDEPENDENT PRIME-TIME PRODUCTION COMPANIES, WHO HAVE PRODUCED NETWORK PILOTS AND/OR SERIES SINCE '70-'71, BUT WHOSE OPPORTUNITIES ARE FURTHER LIMITED BY PTAR.

PRIME-TIME PRODUCTION COMPANIES

1. AARON RUBEN PRODS.
2. ALAN KING PRODS.
3. ALAN LANDSBURG PRODS.*
4. APJAC PRODS.
5. ARENA PRODS. (NORMAN FELTON)*
6. ARNIE ROSEN PRODS.
7. ARWIN PRODS.
8. ASHMONT PRODS.
9. BERT LEONARD
10. BERNIE ORENSTEIN PRODS.*
11. BING CROSBY PRODS.
12. BOB BANNER ASSOCS.*
13. BRENTWOOD PRODS.
14. BROWNSTONE PRODS.
15. BRUCE JOHNSON PRODS.*
16. CALORIC PRODS.
17. CAVE CREEK PRODS.*
18. CHATHAM ENTERPRISES*
19. CLAUDE PRODS.
20. CLEROW PRODS. (FLIP WILSON)
21. CONCEPT II*
22. COOPER-FINKEL/JACKIE COOPER PRODS*
23. DAISY PRODUCTIONS
24. DANNY THOMAS PRODS.
25. DE PATIE FRELENG ENT.*
26. DON FEDDERSON PRODS.
27. DONLEE PRODS
28. DOUGLAS S. CRAMER
29. EQUINOX PRODS.
30. FILMWAYS
31. FOUR D PRODS.*
32. FUN HOUSE PRODS.
33. GENE REYNOLDS PRODS.
34. GEORGE SCHLATTER PRODS.*
35. GREG GARRISON
36. GLENCO PRODS.
37. HANNA/BARBERA
38. HENDERSON PRODS.*
39. BOB HENRY PRODS.
40. HENRY JAFFE ENTERPRISES
41. HERBERT BRODKIN
42. HERBERT LEONARD
43. HERMAN RUSH & ASSOCIATES*
44. HUMBLE PRODS.
45. ILSON-CHAMBERS PRODS.
46. ITC

*Member of NCITP

47. JADROW PRODS.
48. JED PRODS.
49. JEMMINS PROD. (BILL COSBY)
50. JOEL FREEMAN*
51. JOHN RICH PRODS.
52. JOHN-JER PRODS.
53. KROFFT PRODS.
54. LESLIE STEVENS PRODS.
55. LUCILLE BALL PRODS.
56. MARTIN RANKIN PRODS.
57. METROMEDIA PRODUCERS CORP.
58. MI-BAR PRODS.
59. MOTOWN PRODS.
60. NABORLY PRODS.
61. NORMAN ROSEMONT PRODS.
62. NORMAN TOKAR PRODS.
63. NORWAY PRODS. (GENE RODDENBERRY)*
64. OMNIPOTENT PRODS.
65. PA PRODS.*
66. PALOMAR PRODS.
67. PARRADINE PRODS.
68. PEEKSKILL PRODS.
69. PERSKY-DENOFF
70. PLAYBOY PRODS.
71. RFD PRODS.
72. RODPHI PRODS.
73. ROLLINS-JOFFE-BESSELL
74. SAVANNAH PROD.-HANNEAR INC.
75. SHELDON LEONARD PRODS.
76. SIDNEY SHELDON PRODS.
77. SIMCHA PRODS.
78. SMITH-HEMION
79. SPECTRUM PRODS.
80. STONEHENGE PRODS.
81. STREET CORNER PRODS.
82. THOMAS-CRENNA
83. THOMAS-SPELLING
84. THORNHILL PRODS.
85. TIMKEL ENTERPRISES
86. TOMKA PRODS.
87. TOMORROW ENTERTAINMENT (G.E.)
88. TURNEM PRODS.*
89. VAN BERNARD PRODS.
90. VIACOM
91. VINCE EDWARDS PRODS.
92. DUKE VINCENT PRODS.*
93. WM. P. D'ANGELO PRODS.*
94. WILSHIRE PRODS.*
95. XANADU PRODS. & AURORA ENT.*
96. YORKSHIRE PRODS.

*Member of NCITP

MTM's sitcoms prove well worth a Tinker's damn

Two holdover hits, two new series fly company's banner this season; another's already a '74 casualty; producers explain their ideas on how to compete alongside Lear

The lion's share of the TV situation-comedy publicity tends to go to the Norman Lear shows like *All in the Family*, *Sanford and Son* and *Maude*, not only because of the huge audiences they attract but also because they dabble in such controversial themes as abortion, race prejudice and Watergate.

And, too, Carroll O'Connor (*All in the Family*) and Redd Foxx (*Sanford and Son*) made headlines across the country with their assorted squabbles over wages and working conditions earlier this year.

But, almost without anyone's noticing, MTM Enterprises Inc.—the initials are, of course, Mary Tyler Moore's—leapfrogged over Norman Lear's Tandem Productions and placed five situation comedies on the 1974-75 prime-time schedules, compared to Mr. Lear's four. However, it became even-up last week when one MTM series was canceled (see page 33). The other four are *The Mary Tyler Moore Show* (now in its fifth year on CBS). *The Bob Newhart Show* (starting its third CBS year), and two rookies. *Rhoda* (a CBS spinoff from *The Mary Tyler Moore Show*) and *Friends and Lovers* (which has been awarded the choice Saturday-night time slot between *All in the Family* and *The Mary Tyler Moore Show*). The casualty was *The Texas Wheelers* (a raucous outdoor comedy, which ABC bought and which was something of a departure for MTM).

MTM would have had another new show this fall—NBC's *Second Start*—if the courts hadn't intervened on the access rule and forced the networks to trim a few shows from their schedules. But *Second Start* goes into production this month for a probable January insertion into NBC's line-up.

"When Norman Lear found out we'd sold all those new shows, he sent us his condolences," said Allan Burns, the cocreator of *The Mary Tyler Moore Show*, *Rhoda* and *Friends and Lovers*. Mr. Lear knew the burdens borne by a small independent as it changes from its former cottage-industry atmosphere to the bustling-factory climate in which it operates today. (The company now employs close to 500 people.) If success has turned Allan Burns's life into never-ending rounds of strenuous activity, it has also turned Grant Tinker, the president of MTM Enterprises (and the husband of Mary Tyler Moore), into a vocal agitator for higher network fees to production companies. When Mr. Tinker had only the Moore and Newhart shows to worry about, he didn't mind taking a loss at the end of each year because of the fat syndication fees he will be able to command when these successful series end their network runs. But at the outset of this season, with three new shows added to the production line, Mr. Tinker was complaining to the networks about the losses he claimed to be sustaining week-in and week-out. "The cost of living has risen so drastically that we're now paying almost $130,000 to do an episode of *The Mary Tyler Moore Show*," he said, adding that network payments to MTM fall far short of that amount. So although MTM's gross income has reached the $20-million-a-year category, "we won't even break even when this season is finally wrapped up," according to Mr. Tinker.

Mr. Tinker, 48, is the one most responsible for turning MTM into the going enterprise that it is today. But he says he wasn't directly involved in *The Mary Tyler Moore Show* from the pilot through its first year on the air.

Mr. Tinker started in TV as a programing executive at McCann-Erickson and then at Benton & Bowles in the 1950's and spent 1961 to 1967 as an NBC programer before going on to Universal and 20th Century-Fox.

Mary, meanwhile, according to Mr. Tinker, was "bombing out" in a series of theatrical-movie duds in the 1960s (including such unmemorable titles as "A Change of Habit" and "What's So Bad About Feeling Good") after having scored a hit in *The Dick Van Dyke Show* for five successful years on CBS.

She and Mr. Van Dyke quit the show when it was at its peak to concentrate on movies. But by the late sixties, when neither of their careers was going anywhere, CBS put them in a one-shot special called "Dick Van Dyke and the Other Woman." "The special was such a smash," Mr. Tinker recalled, "that CBS gave Mary a full-fledged commitment, and that's how *The Mary Tyler Moore Show* was born. I got involved only after the series was a going thing."

But whether MTM Enterprises continues as a going thing depends on the networks' upping their payments to the company, according to Mr. Tinker. As an illustration, he says that *Second Start* is costing him $120,000 a week to produce, but NBC pays only $100,000 for the initial airing and $15,000 for the first rerun. "And half of that $15,000 goes directly to the actors and writers and so on as residual payments," he said. "We only see $7,500 of it."

And ABC's cancellaton of *The Texas Wheelers* after only four episodes, involves an estimated loss to MTM of $150,000, as Mr. Tinker sees it.

The MTM people are also somewhat uptight about *Friends and Lovers*, starring Paul Sand. The show has been coming across with high 30's shares, which would be great under normal circumstances. But when the lead-in is the most popular show on the air, *All in the Family*, it is not operating under normal circumstances. And with *All in the Family* averaging in the low 50s so far this season, a dangerously high total of 12 share points (16 in the most recent na-

Cat's meow. The MTM take-off on MGM's roaring lion ends these five shows (clockwise from below): *Rhoda*, *The* (soon-to-be-late) *Texas Wheelers*, *The Paul Sand Show*, *The Bob Newhart Show* and *The Mary Tyler Moore Show*.

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tionals) are vanishing from CBS during the station break.

Allan Burns is also steamed because the CBS programers forced him to postpone the original premiere episode of *Friends and Lovers* in favor of what to him was a weaker episode. His misgivings were shared by many critics, who regarded the program as contrived and mechanical. As Mr. Burns remembered the incident: "Fred Silverman [CBS's programing vice president] gave us the okay for the original episode based on the script, which had Paul getting involved with a ballerina. The episode is rich, romantic and funny, and structured almost like a movie.

"But when Fred saw the finished film, his reaction was: I'm scared of it—there's too much classical music and ballet." Mr. Burns added that the unfavorable critical reaction to the substitute Sand episode was dismissed by Mr. Silverman with the reminder that *Time* magazine and *The New York Times* both regarded the first episode of *The Mary Tyler Moore Show* five years ago as an unmitigated disaster.

The real difficulty with the Sand show, as Mr. Burns saw it, is that "unlike Mary Tyler Moore, for example, the character Sand plays has no constant underlying problem. Mary is a woman over 30 who's single and trying to make a living in a man's world. A male bachelor over 30 who's making good money, like Paul, obviously doesn't have Mary's pressure. So, in effect, we have to create a new pressure for Paul every week, and that means really racking our brains over storylines."

One remedy: the writers have decided to lay a set of parents on Paul (to be played by Jack Gilford and Jan Miner, two show biz veterans). "They've lost all their money in an Arizona retirement investment that went bust," Mr. Burns said. "So they pile on their son and become an additional financial burden to him. And we'll have them treating him like a little boy, which should squeeze some conflict back into the show."

The unqualified big hit of MTM's three new shows is *Rhoda*, but Mr. Burns (who pretty much divides his time between *Rhoda* and the Sand show, according to Grant Tinker) said he is worried that the program might "lose its thrust" when the main character gets married during the course of an hour-long special next month. "We wanted to keep Rhoda Morgenstern single for 12, maybe 15 episodes," he said. "But Fred Silverman, who's a very persuasive man, told us that if we got her married in the eighth week we'd be guaranteed a high rating during the Nielsen sweep period. And, even further, that we could expand to an hour that week and combine the casts of *Rhoda* and *The Mary Tyler Moore Show*."

The one thing that both Mr. Burns and Mr. Tinker are striving to avoid on *Rhoda* is a too heavy emphasis on the character's New York Jewishness. "We don't want to founder in some ethnic sea," Mr. Tinker said. And, added Mr. Burns: "The show is about people—the

Behind the cameras. Much of the business and creative drive behind the Mary Tyler Moore Enterprises mini-empire is supplied by Grant Tinker (l), the company's president, and Allan Burns, the co-creator and chief writer.

effect a Jewish mother [comedienne Nancy Walker plays Rhoda's mother] has on her daughter is universal. It applies to Irish mothers, German mothers, right on down the line."

MTM's two holdovers—*The Mary Tyler Moore Show* and *The Bob Newhart Show*—are humming along smoothly again this year. (In the most recent national Nielsens they both cracked the top 10 for the week, each attaining a healthy mid-40s share.)

Mary may, however, be getting a little more unbuttoned this year, according to Mr. Burns. "During the off-season she gained about 20 pounds, and on her it looks fantastic," he says. "So she'll be projecting a bit more sexuality this season—we'll give her more physical relationships with attractive men."

But the writers have no intention of fixing her up with a permanent love interest. "First of all," Mr. Burns said, "where would you find the actor? He'd have to be an attractive, intelligent guy, in his mid- to late-30s, who can play comedy. For example, it took us five months to find Rhoda's husband.

"And, secondly, we're performing a service to all the unmarried women out there by telling them that they shouldn't feel pressure to get married or to make permanent liaisons."

One marriage that's working beautifully is the Bob Newhart-Suzanne Pleshette match-up, and Tom Patchett and Jay Tarsis, the producers of *The Bob Newhart Show*, have no intention of tampering with success. "Bob and Suzanne play off each other perfectly," Mr. Patchett said. "Bob is the low-key reacter, the vulnerable guy who always seems to be put upon. Suzanne is more open, less inhibited—she'll launch into things without thinking, and that often precipitates the conflict."

Like MTM's other three CBS shows, each scene of Bob Newhart's program is shot with three cameras simultaneously while a live studio audience looks on. "This method allows us to make as many changes as we want in the editing room because we've got three angles for each scene," said Mr. Tarsis. Mr. Burns is even more emphatic. "We've salvaged a lot of shows in the cutting room," he said, adding that this factor gives MTM's series an advantage over Norman Lear's shows, which are all taped before a live audience. Although three tape cameras are used, the actors' movements are blocked out in advance. The Lear shows are, in effect, pre-edited—the actors know which camera they have to play to, and only one camera records the action at any given time.

The Lear method is cheaper, but, in Mr. Burns's opinion, "film looks better. The high-key lighting for tape is too bright, too harsh—it gives everything a look that's too hard-edged for my taste." The only thing that would push MTM into shifting to tape, Mr. Tinker said, is for the costs of shooting with film to continue to skyrocket the way they have in the past year or so.

Another aspect that separates a Lear show from an MTM show is the conscious attempt by Mr. Lear to inject controversy into his series. "We don't hit our audiences over the head with social comment the way Norman does," Mr. Tinker said. And Mr. Burns added: "We figure that since Norman is deliberately trying to do satire of current issues, why should we do the same thing? But that doesn't mean we're not topical—we started off the season with a show about Mary Tyler Moore's going to jail for refusing to reveal her sources."

Finally, Mr. Patchett volunteered what's probably the most practical reason for MTM's steering clear of social issues: "When you deal with politics, you stand a good chance of alienating half your audience."

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THE NEW YORK TIMES, THURSDAY, OCTOBER [illegible] 1974

Economic Crisis Besets Producers of TV Series

By LES BROWN

[illegible] Hollywood [illegible] that produce prime [illegible] series are up against [illegible] economic crisis that [illegible] part by inflation, which [illegible] may show up on [illegible] screens next September unless the television networks substantially increase [illegible] for shows.

The conditions [illegible] next fall the number of dramatic series requiring [illegible] filming, since they are [illegible] expensive, and [illegible] the number of [illegible] programs confined to an indoor set. There may also be fewer companies supplying programs for prime time.

A survey of Hollywood studio chiefs and key executives [illegible] found that most programs are sold below cost to the networks, some running to weekly [illegible] of $60,000. Program [illegible] traditionally have made their profits in overseas sales and in domestic syndication [illegible] their network runs. But at a time when production [illegible] are soaring, the secondary market for TV series have been shrinking.

The threatening combination [illegible] one film studio executive to question, in an industry forum recently, "whether this really is a business any longer."

That the three networks made record profits in 1973 and continue to do exceedingly well this year has served only to exacerbate the distress of the [illegible]

[illegible] networks increased [illegible] program [illegible] 5 per cent this season [illegible] increased [illegible] 12 per [illegible] slot in the [illegible] More often [illegible] going to [illegible] Edward A. Montanus [illegible] president of M-G-M [illegible] an opportunity [illegible] speculation that [illegible] may not want [illegible] with it."

Five-Year Run Needed

To accumulate a sufficient library of reruns for syndication — somewhere around 100 episodes to enable a station to [illegible] the program every [illegible] at the same time — a [illegible] series must run on the networks five years or longer.

Those canceled within the [illegible] three or four years [illegible] may lose millions for a studio because they lack residual [illegible]

Mr. Montanus pointed [illegible] 5 per cent of [illegible] series stay on for [illegible] and [illegible] 9[illegible] per cent [illegible] a four-year run. [illegible] every [illegible] that [illegible] close to $30-million [illegible] foreign and domestic syndication, according to Frank Price, president of Universal Television, there are dozens of [illegible] failures whose negatives become worthless.

The rate of failure is exceedingly high in television [illegible] series last [illegible] beyond a single season. This season close to a dozen are already in line for cancellation by January. Many will cost the studios that produced them more than $500,000 for the [illegible]

[illegible] the leader in the [illegible] Television [illegible] of prime-time [illegible] to the networks [illegible] only nine [illegible] Welby, M.D. [illegible] profitable, Mr. Price [illegible]

[illegible] the sustained [illegible] to stations. [illegible] has some hope [illegible] this year, such as "The [illegible] and [illegible] Love," which may develop into long-term hits. [illegible] has a string of losers [illegible] early cancellation, such as [illegible] "Daughters" and [illegible] each of which [illegible] an immediate and [illegible]

Winners and Losers

[illegible] measure of [illegible] was [illegible] on the air," said [illegible] Mitchell, president of [illegible] Pictures Television [illegible] to Universal [illegible]

[illegible] will pay [illegible] $240,000 to $250,000 [illegible] a one-hour filmed episode of [illegible] series, including the license [illegible] The [illegible] cost more [illegible] produce [illegible]

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[illegible] with the amount of travel and location filming involved and with the fees paid to stars.

Shooting and action scenes which require stunt men also drive up the costs. Studio sources estimate that filming "Hawaii 5-0" in Honolulu, "Harry O" in San Diego and "Born Free" in Africa has increased the production expense by as much as 25 per cent.

"The networks want location shooting, but we run the risks," Mr. Price said. "If we go one day over in our shooting schedules, it's another $20,000 out of our pockets."

Most studio officials predicted that, unless the networks reduce the risk, more programs will be done on videotape and confined to a sound stage, the number of adventure programs will decline, cosmetic location shooting will be eliminated and few new programs will engage high-salaried stars.

These austerities, they said, would manifest themselves in prime time as early as next fall.

'Only Three Customers'

"We have only three customers—ABC, CBS and NBC—and they have the ability to determine the purchasing price," said Edward Bleier, vice president of Warner Bros. Television. "Moreover, they control where they schedule our program investments. When they put you up against a hit like 'All in the Family' the odds get very heavy against you."

Executives of the three networks acknowledged [illegible]

[illegible] of the film companies' complaint and, although reluctant to commit themselves in interviews, indicated that it would not serve their interests to have dependable production sources drop out.

Some gave unspecific assurance that license fees would be raised, but none went so far as to suggest that the networks would cover the full cost of production in all, or even most, cases. Network fees were approximately in line with production costs until about three years ago, and the gap has widened year by year, Mr. Mitchell of Columbia said.

Paint Up 75 Per Cent

He said the cost of building a set doubled in the last year and noted that prices of raw film stock increased 25 per cent, paint 75 per cent and lumber [illegible] per cent, while the prices for virtually every craft [illegible] were raised around [illegible] per cent. Electricity, transportation and wardrobe costs also [illegible].

[illegible] with inflation, the secondary markets from which [illegible] are to be derived have [illegible] getting smaller.

Domestically, the prime-time [illegible] rule has reduced the opportunities for the sale of [illegible] to network-affiliated stations because the rule restricts [illegible] to first-run shows [illegible] the top 50 markets. It has [illegible] back in abundance [illegible] produced [illegible] which compete with [illegible] in the syndication market.

Mr. [illegible] of M-G-M [illegible] complained that Federal regulations [illegible] upset the balance [illegible] not only in the matter of the prime-time access rule [illegible] the Federal Communications Commission's [illegible]

[illegible] the networks out of program ownership.

"When the networks were allowed to invest in shows for a minority interest, they assumed much of the burden that represents our deficit financing today," he said. Other film studio executives, however, consider the restriction against network involvement desirable. They believe that the networks tended to give preference to the programs in which they had an investment.

As the domestic market grows tighter, the program producers pointed out, overseas sales have had to contend recently with limited quotas for imported television shows imposed by the Governments of several countries, among them Australia and Canada. And increasingly there is competition in the foreign markets from Britain, Japan, Mexico and other countries whose production activity has grown as their television systems have matured.

According to industry estimates, $60-million was realized by the major companies in TV series sales abroad in 1973. While that surpassed the estimated $56-million for the previous year, it involved an inflationary dollar and large increases in licensing fees to certain countries.

The larger gross belies the fact of fewer series sales abroad, studio executives indicated. They added that although the United States remains the world leader in the export of television shows, the opportunities for sales to other countries have been diminishing.

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Producers gripped in new crunch between costs and prices

They say rise in TV network fees is their only hope of survival, and escalation of program expense is now seen as all but certain; 8-10% hike seen for 1975-76 season

For the commercial television networks and their program suppliers, the time to haggle has arrived. With the new fall season off and running and the January replacements virtually in the can, attentions in New York and Hollywood are turning to what is in store for both sides next year. From all accounts, some unprecedented concessions may be in the offing.

The locking of horns between producers and network negotiators over the bargaining table has become a seasonal tradition, with the former predictably espousing a dire need for increased license fees—lest their hard-won enterprises fall by the wayside—and the latter attempting to calculate the delicate balance between need and greed. Customarily, the result has been a stand-off, of sorts, with the networks reluctantly upping the ante by three to five per cent—less than the producers say they need to survive, and more than the folks in New York would prefer to offer. Both manage to endure.

Perhaps it could have gone on forever. But a new element has poked its troublesome head into the negotiation process. Its name is inflation, and it's forcing reassessments on both coasts.

Producers are declaring in earnest that if the networks fail to open their purses to a previously unthinkable width this year producers might not be around to ask again next year. With production costs skyrocketing—particularly the below-the-line expenditures involving technical and material, rather than creative, resources—Hollywood is complaining of [illegible]. In verification, producers point to the networks' economic achievements of the past year—in which ABC, CBS and NBC collectively enjoyed a 66% increase in profits.

In addition, the escalating price of money is having an appreciable effect on producers' fortunes. Most banks, it is reported, are demanding that some 20% of the amounts producers borrow to finance their production costs be kept on deposit. Thus, if a producer is borrowing at prime interest rates (12%), he is in effect paying roughly 15% for the money he sees.

The producers' no-kidding attitude, however, is apparently being taken to heart. Indeed, officials at two networks (CBS declined to comment on the issue) predicted last week that, on the average, they will be increasing their program payments by eight to ten percent.

One network official assessed the situation as follows: "The cry has always been that we're not paying them enough. But now, because of the escalating costs, they're saying that they really mean it. There's no question that in the past few years there has been a greater increase of costs than had previously been the case. We're trying to the best of our limits to be responsive to those problems."

Said another: "There's a demand for an unprecedented increase. There's no question in my mind that the networks are going to be paying more."

Neither networks nor producers are anxious to divulge specific costs, particularly at a time of year when negotiations for the next season's offerings are at their most delicate stages. This same network official, however, postulated that in general the price the networks have been paying for an hour show averages out at between $230,000 and $240,000. For a half hour, he said, the average is between $120,000 and $125,000. There are numerous variables. For instance, series that are shot on location, such as NBC's *Born Free* (filmed entirely in Africa) or CBS's *Hawaii-Five-O* would obviously entail higher expenses than the likes of ABC's *Marcus Welby, M.D.* (which is shot primarily in the studio with a three-camera set up). Hit series obviously command higher payments as their tenancy on the networks increases in longevity. Such an increase has undoubtedly been realized by CBS's *The Waltons*, although the precise network payment for that particular series was not disclosed. But at the same time, *The Waltons* producer, Lee Rich, advises, the cost of a single installment of that series has gone up from $250,000 to $300,000.

The most severe ramification of Hollywood's inflationary woes is a general restructuring of the marketplace, several producers contend. Said Grant Tinker, whose MTM Productions has placed five programs in prime time this season: "Costs have increased at a far more rapid rate than what we're being paid. A few years ago, you could frequently make a show for what it paid you [on its initial network run]."

The first profit came in residuals for the second showing. Now, Mr. Tinker lamented, "it comes to a point where the show doesn't recover our costs." Thus, he concluded, the only way to make any money in television production is to "hope for a success" on the network run, thus making the product attractive in the eventual syndication marketplace.

But, Mr. Tinker noted, the longer a show stays on the networks, the longer the red ink mounts up. Thus, the ultimate result is nonproductivity. "Some would call this a nonbusiness," Mr. Tinker mused. "And some of us are just too stupid to get out of it."

Everyone concedes that TV production is a risky business—a gamble at best with no hope for a short-term return. While series like *The Waltons* have much less to worry about, Mr. Rich has been on the short end of that gamble before. He points to *Doc Elliott*, one of last year's many seasonal catastrophes (it died after 15 episodes), for which the prospects for syndication are nonexistent.

Mr. Rich said he understands CBS is charging $100,000 for one minute of advertising on *The Waltons*—averaging a $600,000 intake for each one-hour program. "Why, I don't get even half that sum to produce the show," Mr. Rich complained, "and I'm bound to deliver two 35 mm prints, plus two or three

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No exception to inflation. The minimum payments for writers of TV scripts increased Sept. 16, as provided under the new agreement with producers that was hammered out after the 16-week strike by the Writers Guild of America West last year. The new rate for a high-budget, half-hour prime-time program is $4,500, up from $4,150 for story and teleplay. A one hour show goes up to $6,400, from $6,000; a 90-minute show to $9,400 from $9,000; a two-hour show, $11,900, up from $11,500. Also increasing are the scale rates for rewrites, polishes, narrative synopses, formats, narratives, weekly employment and hyphenate compensation, as well as for nonprime-time dramatic programs (a 30-minute story and teleplay, to $1,657 from $1,563, for example) and freelance weekly rates ($683 from $644).

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16 mm prints. If they would only let me do it on 16 mm. . . ."

Mr. Rich maintains that times have never been better for the networks. A former executive at Benton & Bowles, he recalls that "we used to fight the networks on $2 or $3 cost-per-thousand figures and threaten to go to *Life*, *Look* or the *Saturday Evening Post*. Now advertisers are paying $4 or $5 and there's no objection; there's nowhere else to go."

If the grumbling of an ostensibly hard-pressed producer can be somewhat discounted for its prejudicial nature, consider this assessment from one who has worked on both sides: "It's a disgrace," said he of the networks' alleged tight-fistedness. "They're sucking in dollars like there's no tomorrow. I find it unbelievable. . . . Something is wrong with the balance of the industry when the networks can be piling in money and the program suppliers are taking a bath. Right now, I guess the word is greed. It's not only continuing: it's getting worse all the time. In the next couple of years, they'll destroy everybody."

How long could producers get by absent an increased network paycheck? "It depends on how astute the networks are," said Grant Tinker, who doesn't think any independent could last any more than three years (he gives his own MTM Productions a lesser life expectancy). "Ultimately, we could get squeezed out. The industry could be reduced to two or three majors who can look to other areas to recoter the loss."

Of all the majors, Universal with 13 weekly prime time hours currently scheduled, is the undisputed TV production king. But according to its new president, Frank Price, the giant, too, is cringing from the stone.

"Yes," Mr. Price acknowledged, "I believe there *has* been a spreading gap between license fees and production costs, but that's being going on for the last few years." The thing that now threatens to push Hollywood over the brink, Mr. Price said, is the increasing demand for on-location shooting. In productions such as *Harry-O* (which, Warner Bros. officials lament, is required by ABC to be filmed in San Diego despite the producers' claim that a Hollywood location would suffice), *Born Free*, *Kodiak*, *Sierra* and *Petricelli*—all new this season—the inconvenience of working entirely apart from the studio adds at least 25% to the bottom line costs, Mr. Price noted.

"If you look at the studios in town," Mr. Price said, "there aren't many that are still all that healthy; we happen, of course, to be the glowing exception." (MCA Corp., parent of Universal, reported revenues from TV exhibitions last year at $116.6 million, compared with $31.7 million in 1972. At the same time, Columbia reported TV revenues of $33.1 million; Twentieth Century Fox claimed $27.4 million.)

"Take a look at the hits," Mr. Price suggested. "If you look at the series that went on the air last year, there were only three that could be qualified as hits that came over into this new season. They were *Kojak* [CBS], *$6 Million Man* [ABC] and *Police Story* [NBC]. That's how you figure how you are going to come out. Do you have a show that's long running, that you can syndicate?"

Apparently, several production firms didn't; hence their demise. Several years ago, Mr. Price noted, there were 27 principal TV program suppliers. Now there are 19.

Most producers agree that while the expenditure mill has been accelerated primarily by below-the-line costs in recent years, talent is providing some additional grist. The newly revised (upward) scales announced last week by the Writers Guild (see page 15) help attest to that. And, according to a spokesman for the American Federation of Television and Radio Artists, most AFTRA performance scales enjoyed a 5% increase last fall and are due for another 5% rise in November 1975. Basic fees for the services of major performers (with five lines or more), the spokesman noted, now stand at $254.50 for a one-hour show and $200.50 for a 30-minute offering. To AFTRA, it's a drop in the bucket. "The networks have been making so much money," the spokesman contended, "that the performers' salaries don't even count."

Network officials, however, take issue with such assessments, particularly as they apply the eminently more lucrative salaries commanded for performers in prime-time drama series. It is the networks, one official noted, who foot the bill for any union increase that comes to pass after the initial license contract has been signed. Ratings successes, he said, can be troublesome in that regard. "The older the show, the more increases you have to dole out," he maintained. "For a show that's been on for, say, eight years, the union costs are phenomenal."

While the networks apparently are displaying some sympathy for the producers' misfortunes, several officials were quick to add that—in their opinion—those misfortunes are often blown out of proportion. "Producers," noted one, "are just like anybody else. The guy comes in weeping about his terrible costs. . . . He weedles the highest price he can get."

And sometimes, another network executive maintained, these costs can be reflective of waste as well as necessity. "A

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lot of costs are due to excess," he asserted. He noted one admittedly trivial example of a producer of his acquaintance who discovered—much to his chagrin—that somebody on his staff was running off 150 copies of working scripts, when only 30 or so were needed for production. The cost of Xerox paper, the producer quickly informed the culprit, had increased 70%. "It's the little things like that which mount up," said the network man. "Is it the networks' responsibility to finance inefficiency?"

This same source contended that there have been cases where some of the odious representations made by program suppliers in search of a higher network tab have later proved groundless. This official recalls a relationship of long standing with one producer who had made the red-ink pitch a yearly pursuit for some time. This year, the official complained, "he fully admitted that up until two years ago his business was highly profitable. . . . There's been a problem of salesmanship. What's happened here is that there's been a credulity gap. . . . The complex problem we face is trying to discern what is real and what is put on."

Contributed a third network executive: "A lot of the studios, as far as we're concerned, are being poorly managed. From a business standpoint, they're run the same as they were years ago."

Nevertheless, while the networks have been—and will continue to—demand a higher degree of corporate efficiency from their suppliers, they maintain that they can recognize that something has gone wrong with the economies of scale.

A network man accustomed to sitting at his company's end of the negotiating table related this contemporary scenario: "The guy comes in weeping about his terrible costs, how he can't stay in business unless we start paying more. We say 'well, you've still got the foreign market.' We say 'go sell it to the people in Great Britain and Australia—even though we've financed the whole thing. It's yours and God bless.' He says 'well, the foreign market isn't doing too well.' We say 'if you've got a hit, if it's been on 3-5 years, you must have about 150 negatives. Go put it in syndication. You'll make millions.' He says 'What about the access rule? We can't put reruns in prime time anymore.'"

Thus, this official says, the networks are being more accommodating than ever before. Beside the anticipated 8-10% increase in license payments, he—and several other officials—related a number of concessions in the works.

Most intriguing of these is the network assertion that more allowances are going to be made for program failures, as well as successes. In the former category, they talk of the "short rate." This involves an additional network payment to producers of programs that don't make it past the initial 13 weeks. It is given at the outset of the network-producer relationship as an incentive, to compensate for the producers' possible lack of return on his initial investment. Hypothetically, if a 30-minute program is slated to sell at $100,000, and it flops in the initial weeks, the producer will actually receive around $110,000 per program.

At least one network, a reliable authority reported, has elected to increase "short rate" it pays out by 25-30% for the 1975-76 season.

On the other side is the success factor. This is also injected into the contract at the outset, and assures the producer that the per-program license fee will increase by pre-set increments each year the show remains on the network. A network spokesman estimated his company will be upping this incentive by 5-7% this year.

Many observers point to the obvious economic advantage the networks enjoy over their suppliers. With 19 sellers and only three purchasers, they point out, it's clearly a buyer's market. Nevertheless, the networks appear to be headed for a season of negotiations in which the producers will emerge the short-term victor.

Why will they relent? Because, say observers on both sides of the table, nobody wants to see the independents go out of business. Economically, that would be unwise for the folks in New York because it would invite a nose-to-nose confrontation with the Goliaths of Hollywood. But, say the networks, there's an esthetic consideration as well. A larger sampling of suppliers gives the networks a more diversified program image—and avoids the gloss and schmaltz that many network officials fear would become preponderant were television production in its entirety left to the designs of the majors.

"I don't think we would be meeting our responsibilities," moralized one network man, "if we engaged in a program that constricted the source of supply. Television is a monster in the way it chews up creative material." To avoid stagnation, he stressed, "we have to somehow encourage all the young people of the world to take an interest in this business."

Thus, if the indications become reality, if the networks up their antes, if Hollywood becomes less wasteful, and if inflation is finally caged, the annual Hollywood vs. New York skirmish could result in a happy ending this year. As one network executive put it: "I'm a great believer that reality will prevail in the long run."

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THE Valley REPORTER

Friday, October 11, 1974

MGM Exec Says Television Industry 'Economically Sick'

By Lou Pelegrine

New York — The television production industry has taken a financial beating to the point where it is now "an endangered species," Edward A. Montanus, senior v-p of MGM-TV, told members of the New York chapter of the National Academy of Television Arts and Sciences at a luncheon meeting yesterday.

Montanus said that "there isn't a TV production company that a broker would list as a blue chip," notwithstanding that "no one has invested more energy, time and money in developing a unique art form or attracted such worldwide attention as this currently economically sick industry."

Montanus named "two major factors that influence survival: cost and the mortality rate." He said that "cost rises have affected us on all fronts" while "prices have remained firm."

Montanus noted that in five years license fees for a half-hour comedy show have jumped from $81,500 to approximately $105,000 while costs have gone from $69,000 to $130,000. License fees for a one-hour show have risen from $180,000 to $215,000, with

(Continued on Page 20)

TV 'Sick' —

(Continued from Page 1)

costs soaring from $165,000 to $230,000.

Montanus cited figures showing that of the 379 new shows that premiered in prime time in the last 10 years 60% lasted one season, 17% two, 9% three, 5% four, 9% five or more.

According to Montanus, TV production not only is "a risky business" with the chances of a show's survival "slim," but economically the picture has gotten very bleak.

Montanus saw the difficulties of the TV production industry was compounded by the fact that the foreign market "is slowly drying up" and the imposition of the prime-time access rule by the FCC "hit us where we live financially."

"For the most part," he said, "the foreign market is controlled by government monopolies which are continually placing additional restrictions on the amount of American product that can be sold. This loss has had a profound effect on the whole financial structure."

Montanus charged that the prime-time access rule has failed to achieve its purpose: serving of the public interest.

Montanus proposd two courses to bring relief to the TV production business: complete elimination of the access rule, and action by the U.S. government to ease foreign quotas and correct "the imbalance of product abroad."

DAILY NEWS, SATURDAY, OCTOBER 12, 1974

"Endangered Species"

Edward A. Montanus, a senior vice president of MGM Television, categorized TV producers, even major companies such as his, as an "endangered species." In a luncheon meeting on Thursday of the New York Chapter of the Academy of Television Arts and Sciences, he said no broker will list a TV production company as a blue chip.

A half-hour comedy show now costs about $130,000 to produce, he said, but a network pays only $105,000. For a one-hour show, production costs are about $230,000, but only $215,000 comes back from the network. Seems crazy, doesn't it? Maybe TV producers should go into making lingerie.

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Thurs., Oct. 3, 1974

On All Channels

Networks' Deficit Program Financing Deplored By Fries In View Of Profits

By DAVE KAUFMAN

Some years ago, when 20th-Fox TV had about 10 series on the networks, the crack bandied around in the industry was, "If Bill Self (20th TV prez) sells another show, 20th will go broke." This was one of those it-hurts-while-you-laugh gags, because of the truth inherent in it. What was referred to, of course, was the networks' tribal practice called deficit financing, whereby a network gives a producer or studio less coin than is required to turn out a specific series or program. Theory behind this is that the producer will recoup his loss when the show is rerun, and if it's a hit, he makes a killing.

Like all theories, it's something else in actual practice. For one thing, there are few hits in tv, and subsequently not many opportunities for that golden goose. Nonetheless, the producer and/or studio shells out more coin than he receives in making the film or films, and the red ink mounts.

One head of a top indie with network hits was complaining about this the other day. It seems it's no longer enough to sell a series, which in itself is quite a feat. The real problem is for the producer to make a profit. No one has come up with the answer. Network chiefs agree readily the producers have a problem, but they are not ready to put up more coin.

Discussing this situation, Charles W. (Chuck) Fries, prexy of Alpine Prods., asserted, "Industry pricing from networks on shows is not keeping up with inflation. The cost to networks for shows should be based on the totality of their profits, not just in primetime." That latter is a reference to networks' contentions oft made in the past that they lose coin on their primetime programming.

Re-Think Called For

Fries, formerly production chief with Metromedia Producers Corp. and a v.p. at Screen Gems before that, declares, "I think the networks are going to have to take a new look at their overall picture and reevaluate the situation, that they will have to consider increasing prices for programs because the situation has been aggravated by inflation and the access time."

His views obviously are shared by others in production, but likely not by networks, and that is the rub. Network brass complain they are already paying more than ever before for shows (true), but so are producers, what with the escalation on prices of talent, labor, etc.

Fries recalls when he was with SG, back in 1967, they talked with Carl Foreman about producing "Born Free" as a two-hour tv feature which would be released theatrically also, making it under the Eady Plan. Idea was to make their profits from Eady coin. But costwise the plan proved impractical, and they passed. Fries thought at the time a "Born Free" series could eventually be produced at the right cost if done in the U.S. New "Free" series which bowed this season is shot in Africa.

Cash Guarantee Deal

Fries' Alpine has been producing tv features, and he has a deal with Worldvision whereby it gives him a cash guarantee in return for distribution rights. It gives him $20-25,000 per show, but has no piece of the profits.

As one who has been on both the major and indie side of the fence, the exec is baffled at how major studios can continue to make product via deficit financing. True, losses are compensated to some degree when majors sell their theatrical films to the networks, he observes. But still, majors spend about $300,000 on an hour show, and get from $200-225,000 from the network, he asserts.

He feels one solution may be in electronic recording, on tape, when that will be feasible. It will cut costs, but foreign distribution falls off substantially, Fries admits, adding thus it would not be a total savings. If there were equipment which would record shows taped for the U.S. on 625 lines for the foreign market, that would be the answer, but this hasn't been devised yet, he states.

Meanwhile, his indie company has a number of projects made, more to come. Incidentally, his "Terror On The 40th Floor," recently aired on NBC-TV, cost $700,000.

He has in development "Call Of The Wild" with Metromedia. "Where Have All The People Gone?" is a potential pilot for NBC. His "Strange Homecoming" airs on NBC Oct. 29. Fries is developing "Foster And Laurie," about two cops killed by snipers, as a two-hour show for CBS-TV. Also, "I Belong To Me," as a 90-minute "World Premiere" for NBC, this one being written by Arnold and Lois Peyser, who will debut as producers on the project.

In negotiation with CBS is a two-hour dramatic spec, "Einstein: His Life And Times." Rita Lakin is scripting another Alpine drama, "Hey, I'm Alive," this one a coprod with Larry Schiller's Alskog Prods. It's a real-life yarn about two people who survived 49 days in the Alaskan wilderness after their plane cracked up.

Also in the Alpine blueprint is "Northridge Medical," planned as a soaper for CBS, which has ordered 10 scripts. Margaret and Paul Schneider are scripting.

A substantial number of network
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25a. A look at the record, not only of our inquiry but what has since occurred, shows that much of the criticism of television fare as bland, etc., is directed toward the network-chosen, hour-long film series which have become staple fare. These are the programs over which network managers exercise the highest degree of control. Programs independently produced for advertisers such as the Telephone Hour, the Hallmark Hall of Fame, Robert Montgomery Presents, National Geographic Society Documentaries, and numerous others were generally considered by critics to be bright spots in network schedules.

26. However, this argument is somewhat beside the point. As we have repeatedly emphasized, it is not our intention to set up standards of diversity and quality in television programing. What we intend is to encourage conditions of competition for network evening time and programs which will permit the harnessing of the widest diversity of marketing interests of American business which is economically feasible to the network program selection process. The history of television programing indicates that this would result in a greater diversity among individual programs. However that would be the decision of the marketplace. In our commercial television system program diversity—particularly in entertainment—can be little greater in the longrun than sponsors are willing to support. At present, network program procurement practices tend to restrict rather than promote such diversity. They tend to encourage mass circulation oriented advertisers and to discourage those whose advertising objectives or target audiences may be somewhat different and would require somewhat different type programs. It appears highly probable that the American business community provides a greater potential variety of economic need, and hence economic support, for diversity in television programs and program sources than present network practices bring to expression.

Dissenting Statement of Chairman Dean Burch in Which Commissioner Wells Concurs

The majority of the Commission has today acted on a proceeding that began with a notice in 1965, but whose origin really goes back over a decade. The thrust of my dissent is directed to the so-called prime time access rule (Formerly Westinghouse plan, formerly modified 50–50 plan).

The basis of this rule is that as of today, as evidenced by the data in the report and order, the three network organizations, ABC, NBC, and CBS, supply either through their own production efforts or through joint ventures with independent producers approximately 96.7 percent of the network programing which dominates the prime time viewing[1] hours. At the present time networks during the 7–11 p.m. (e.s.t.) time period feed 3½ hours of network programing, with 30 minutes being left for the stations themselves to supply out of their own resources. The rule would require that during this period (of 7–11 p.m. (e.s.t.)) the affiliates carry no more than 3 hours of programing, the net result being an additional 30 minutes per night of time which must be supplied by the local station, either from locally developed programing or from syndicated materials which they can purchase through the syndication market. One other proviso of the rule (which I will comment upon hereafter) is that during the 1-hour period from which network programing is to be excluded, the affiliated stations may not use an off-network syndication series or feature film previously broadcast in the market.

[1] Thus, network affiliates in 1968 carried an average of between 3.3 and 4.7 (depending upon size of market) hours a week of nonnetwork programing between the hours of 7–11 p.m. out of the total of 28 hours; between the hours of 7:30–10:30 p.m. the figure is from 1.2 to 1.6 hours.

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The rationale for this rule goes somewhat as follows: The networks compete vigorously; however, they tend to parallel each other in programing. There is no healthy syndication market in this country because the sine qua non of syndication is access to prime time in the top 50 markets. Ergo, by making prime time available in the top 50 markets, a healthy syndication market will emerge, the competitive system will have been stimulated, and—presumably—the public will benefit.

I want to make it clear that I do not quarrel with the motives of the majority in this rulemaking, to the extent that they are hopeful—although, as I will show, Pollyannish—that this rule will in fact stimulate a healthy independent syndication market, and the public will be substantially enriched by new programing fare. I believe that an unstated premise of the rule adopted today, and one which I think must be faced, is that if a majority of the Commission were satisfied with the present network product, this rule would be deemed unnecessary. I thus believe that, despite protestations to the contrary, the rule is basically a reflection of the Commission's judgment that programing today does not satisfy its standards of diversity. Another parallel unstated premise is the assumption that because of economic motives the networks are purposefully depriving the public of the programing to which it is entitled.

Before proceeding to a discussion of the rule itself, it is necessary to say a word about the pattern of network programing today; namely, that the networks themselves produce or coproduce some 97 percent of the programing. Thus, as to the three networks combined, network participation in all evening (6–11 p.m.) programs rose from 38.5 percent in 1957 to 80.4 percent in 1968, a figure which, when added to the number of network produced shows, reveals a rise from 67.2 to 96.7 percent. Stated differently, independently provided shows decreased from 32.8 percent in 1957 to 3.3 percent in 1968. Similar figures reflect the trend when only entertainment shows are looked to (see par. 12, report and order).

There are a number of reasons for this development, but the prime one is simply economics. Programing is expensive; advertisers have insisted during the past few years on availability of 30-second commercials and have not been interested in sponsoring complete shows. Whether this is good or bad, it is a fact.

The costs of network quality programs have risen enormously. In 1957 a 30-minute network show could be produced for approximately $15,000; in 1968, its cost was $87,000 per half hour, whereas today the information available to the Commission indicates that a 30-minute network quality color show will cost the producer from $100,000 to $150,000.

Quite obviously, the foregoing facts pose a serious problem to entrepreneurs who seek to provide quality shows to stations. The networks can meet these problems because, by the very nature of networking, they can and do deliver, even without option time, the great majority of their affiliates during prime time on an established economically feasible interconnected basis, and are uniquely able to sell spots to national advertisers in the manner now desired by such advertisers.

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Again, let me say that I am not necessarily defending the system, but I think that we must face reality rather than what we might hope and these are the facts today.

With this as background, I turn to what I believe is a fatal flaw in the reasoning of the majority. That reasoning is that, given access to prime time in top markets, syndicators will immediately produce quality programing which will be made available to the stations because it will be profitable to the syndicator and to the station. The real problem with the rule is that this premise has not been demonstrated to be true, and, in fact, the evidence before the Commission presently indicates that it is indeed faulty. Why? Simply because the syndicator, even though assured of a shot at the prime time of affiliates in the top 50 markets, can certainly not be assured that his program is going to be selected by a sufficient number of stations in such markets. Even if the program is selected under existing economics and tax structures, it is quite clear that very great amounts of capital will be required to produce programing, with much of this capital having to be amortized for a long period of time. The fractionated top 50 market is simply not sufficient to sustain the expensive programing effort here required. In short, today in the programing field, money is the name of the game, and unfortunately, the Commission, despite its plenary power to regulate, cannot so easily regulate the laws of economics.

Thus, taking the majority's action at face value, I believe that it is an economic mistake—that it will not produce the result sought, a healthy television film producing market.

Let me turn briefly to another aspect—whether it will result in diversity of programing. Assuming that the rule does have substantial or some efficacy, I strongly believe that there will be little, if any, contribution to real diversity of programing. What will be produced under the aegis of this rule will simply be more of the same—more games, more light entertainment along proven formulas, more "emcee" talk shows. Both the producer and the affiliate will inevitably drift very largely to the sure thing—the tried and true—because of the economics of the system under the rule; indeed, those economics may well dictate programing produced with reduced resources. Time will of course supply the definitive answer here, but unfortunately for the viewing public, I feel confident that my assessment will prove correct.

It may be argued that so what? Why not try this approach, and if it does not work, return to the drawing board. But there is an old medical adage, "First, above all, do no harm to the patient." The Commission today violates that prescription in several important ways.

First, the public in the top 50 markets will be deprived of significant amounts of popular high quality network fare in the prime viewing hours, and in my judgment of the economics, that fare will not be replaced by the equivalent high quality, first-run syndicated programing visualized by the majority. Second, in the smaller markets, it is also clear that there will be a similar deprivation, and indeed, one which will have a much larger adverse impact upon the stations and consequently the viewing public in those markets. The rule purports to exempt the markets below the top 50. In practical effect, there is no such exemption. Here again the economics give the answer; to produce

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and distribute very costly programs for markets which represent only a small percentage of the population is simply not feasible. The networks have indicated that they will not continue to feed 3½ hours of programing just for the below 50 markets, and while the Commission may talk of ordering the waves to roll back, it is just not practical.

This has much more serious consequences for these markets. There is simply not the same advertising base for relatively high cost programing in these markets. The stations may therefore be unable to maintain such programing, even assuming arguendo that it would be supplied by nonnetwork sources.

Third, the rule purports to benefit the new UHF independents coming on the air. But here again the practicalities undermine the theory. Because of the rule, the VHF stations will be seeking more nonnetwork programing, and are in a position to outbid the struggling new UHF, which depends almost entirely on such programing. Because of this consideration, the association of UHF broadcasters (ACTS) recently and in strong terms counseled that the rule will hurt, not help, UHF.

Finally, there is the consideration of the effect on enhanced dissemination of news programing. The originally proposed rule (so-called 50-50) would have exempted newscasts, news interviews, etc., and specifically requested comment on whether news documentaries should be exempted. I fully agree with the exemption in the rule adopted for on-the-spot coverage of news events, and political broadcasts. I disagree, however, with the majority's failure to exempt news interviews and most importantly, the news documentary and the newscast which are, after all, the chief means of informing the public on events and issues. When the question of exemption for the present rule came before the Commission, the majority, aware that the networks could avoid the impact of the rule by extending the 30-minute evening news show into a 1-hour news show, determined not to exempt the newscast. In my opinion, if this rule had resulted in additional prime time news programing—the thing which network television can and does do best—that would have been a benefit to the entire country. Because of its stated concern over the syndication market, the majority forecloses this possibility. The majority also forecloses the possibility of an enhanced number of news documentaries, and indeed may be inducing a cutback in such programing. I strongly believe that the Commission cannot properly adopt a policy of subordinating news programing, which informs the public and is surely not in oversupply, to entertainment programing, which exists in far greater amounts and seeks but to amuse. So on this ground also, I believe that the rule is seriously defective; however, even if remedied in this respect, the rule would still be undesirable, for the other reasons developed.

There is a procedural matter which also concerns me greatly. Immediately prior to the final adoption of the rule in the open rule-making proceeding, the Commission, through telegrams, letters, and other presentations, learned that the west coast syndication market itself, the very people who are supposed to be helped by this rule, were greatly concerned that in fact they would be harmed because

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their major source of income—the networks—would cut back on programing. This point of view was reinforced by a great number of the California labor organizations as well as knowledgeable people from all parts of the industry. These very interested persons requested the Commission to adopt a tentative rule, which would be subject to comment by all interested parties and then, on such a full record, adopt the rule in final form, with such revisions as are appropriate. This procedure, which the Commission recently followed in the computer proceeding (docket No. 16979), seemed to me to be most reasonable, and I therefore moved its adoption. This was denied on the ground that the matter has been kicking around for 5 years, had been subject to full opportunity for comment, and should now be acted upon. I am in sympathy with the idea that we should not take 5 years to do anything, but nevertheless, in the face of mounting evidence that the rule, rather than being beneficial, might actually be harmful, the better part of administrative valor would surely have been to go along with the suggested procedure. I repeat that the first requisite of Commission action is not that it act, but that it act with reasonable assurance of promoting the public interest.

Further, I do not believe that there has been such full opportunity to develop a record on the rule adopted by the Commission. Take, for example, an important part of the rule, the proscription in subsection (3) of 73.658(k) of off-network program series and feature films previously broadcast in the market, in the time period from which network programing is barred. This was not proposed by the Commission, and there has been no record developed on this important aspect. Thus, the Commission today has no data whatsoever as to the economic impact of this particular provision, both on the efficacy of the rule and upon the contractual arrangements of the stations. To what extent, for example, have these affiliated stations purchased series or feature films, with the express purpose (and payment therefor) of presenting them in prime time? What is the effect on the syndicators and the film producers—the persons sought to be helped by this rule? Granted, these are all economic concerns, but, as I have stated before, economics is really what this rule is all about, and the Commission should at least have had up-to-date information in this field before acting.

The Commission does state in paragraph 38 of the Report and Order that it will consider some of these matters on a motion for reconsideration. This is contrary to good administrative procedure, and indeed to commonsense. If there is a substantial question as to the efficacy of the rule, that question should be reached prior to adoption of the rule, not after. Otherwise, the matter smacks of sentence first, judgment later. This Commission has only so many regulatory arrows in the quiver and when it takes a major step such as this rule, it should be taken with full knowledge of all the pertinent facts and after consideration of all the potential benefits and harms that might flow from the rule.

Having set forth my objections to the procedure and substance of the rule, I want to address one last aspect of this rule and indeed of regulatory philosophy in general. The proponents of this rule will argue there is a problem and the Commission has acted to meet that

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problem. In other words, rather than cursing the darkness, they have lit a candle. My answer to that is simply, "Yes, there were and are a number of candles available but in my opinion, this is not one, but rather a sky rocket—flashy, momentarily pleasing, but with no substance." Since we are dealing with economics, if the Commission really wishes to make available to the public diverse programing, it must encourage a different economic base for program presentation. Quite obviously, so long as a broadcaster has only one channel on which to operate, his economic requirements will tend to make him program that one channel for a mass audience. Accordingly, minority needs or tastes will be denied or underserved. This means, in turn, rather than spending years on a rule of this nature, the Commission must concentrate on the obvious alternatives which have a different economic base and thus may make a genuine contribution to diversity. These alternatives do exist and have not yet come to fruition.

First, there is subscription television, which has a different economic base and can present programing that is not necessarily designed for a mass audience and still be economically attractive for an entrepreneur. There is cable casting, a technology which makes multiple channels available and which by its very nature changes the entire economics of programing.

There is the noncommercial educational television system, which, with sufficient and appropriate funding, can make a tremendous contribution to diversity.

Nevertheless, the Commission has moved ahead with this rule—in my opinion simply because it was there. Although it is difficult in this day and age to make specific forecasts as to what will happen, I predict—unhappily—that if this rule is adopted in its present form, after the passage of a few years, there will be no genuine benefit to the independent film industry at least sufficient to offset the detriments to the broadcaster and most importantly to the viewing public. The rule may shift some dollars from one pocket to another and maybe this is good. It may very well harm the networks to some extent, great or large, and in some people's minds, this seems to be worthwhile. In conclusion, while respecting the motives and objectives of the majority in this case, I simply feel that they have wasted the resources and energies of this Commission in a futile effort to administratively tamper with the economics of programing as it exists rather than attempting to create a situation where the economics could make sense.

Concurring Statement of Commissioner Kenneth A. Cox

I concur fully in the action here, though there are some respects in which I would have liked to do things differently. I would like to add some individual comments, primarily addressed to Chairman Burch's dissenting statement.

I share some of his concerns. Like many actions the Commission takes, the resolution of this matter is not guaranteed to produce the results we seek. However, based on the record in this long proceeding and on study of this problem for over 14 years, I think this is the most logical and effective step we can take to correct a serious problem.

61. In accordance with the provisions of § 1.419 of the Rules, an original and 14 copies of all comments, replies, pleadings, briefs, and other documents shall be furnished the Commission. Material filed will be available for public inspection during regular business hours in the Commission's Broadcast and Docket Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,

BEN F. WAPLE, *Secretary*.

CONCURRING STATEMENT OF COMMISSIONER ROBERT E. LEE

I concur in the Notice of Inquiry and Proposed Rule Making. I hasten to add that this should not be interpreted as dissatisfaction with the existing rule but rather as an opportunity to review it with the expectation that the objectives of the rule may be improved.

CONCURRING STATEMENT OF COMMISSIONER H. REX LEE

I concur in the decision to initiate an inquiry into the effect and operation of the prime time access rule (Section 73.658(k) of the Commission's Rules) primarily because, as a general proposition, I favor an administrative agency's review of past regulation. However, my concurrence should not be interpreted in any way as either a repudiation of the rule or a prejudgment of the inquiry proceeding.

I would have preferred to delay the Commission's review of the prime time access rule in order to permit a more meaningful assessment of its impact during the current television season, *i.e.*, 1972–1973, when the full force and effect of its provisions become applicable. Although I have no preconceptions about the use of prime time repeat material by the networks, as the majority decision indicates, there appears to be a relationship between the prime time access rule and television "re-runs." In fact, it is even suggested that "parties may wish to prepare their comments herein with this in mind." It seems to me that a more orderly course of action would be to consolidate the prime time access inquiry with an investigation into the ramifications of a limitation on network television "re-runs."

One other matter deserves consideration. At the time the Commission adopted the prime time access rule in 1970, I indicated that I was in favor of a provision which would have exempted news documentaries from the scope of the rule. It was my belief that failure to adopt such an exemption would tend to discourage the network presentation of news documentaries. I would hope that interested parties would comment on the validity of my earlier prediction in light of actual experience under the rule.

SEPARATE OPINION OF COMMISSIONER NICHOLAS JOHNSON CONCURRING IN PART AND DISSENTING IN PART

In 1970, after years of investigation and analysis, this Commission concluded that the domination of the television program production market by the three networks required Commission action. As part of

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that action, the Commission required that television stations in the top 50 markets take no more than three hours per night from the three networks. At least one hour had to come from independent producers, including the stations themselves. For at least one hour per night, there would be 150 buyers of television programming (three network affiliates in each of so markets) rather than three networks.

In the words of the Commission:

> The public interest requires limitation on network control and an increase in the opportunity for development of truly independent sources of prime time programming. Existing practices and structure combined have centralized control and virtually eliminated sources of mass appeal programs competitive with network offerings in prime time.
>
> In light of the unequal competitive situation now obtaining, we do not believe this action can fairly be considered "anti-competitive" where the market is being opened through a limitation upon supply by three dominant companies.[1]

In affirming the Commission's action, the U.S. Court of Appeals for the Second Circuit commented:

> To argue that the freedom of networks to distribute and licensees to select programming is limited by the prime time access rule, and that the First Amendment is thereby violated, is to reverse the mandated priorities which subordinate these interests to the public's right of access. . . . The evidence demonstrates that despite the fairly wide range of choice available to licensees, they have consistently decided to limit themselves to one program source during prime time. Thus, while the rule may well impose a very real constraint on licensees in that they will not be able to choose, for the specified time period, the programs which *they* might wish, as a practical matter the rule is designed to open up the media to those whom the First Amendment primarily protects—the general public. (emphasis in original).[2]

Now this Commission is embarking on a new proceeding to examine the functioning of the prime time access rule, propose modifications of it, and to consider its demise. Since I would have followed a substantially different course, I am compelled to dissent.

At the outset, one should note the extreme handicaps under which this rule has functioned in the short time it has been in effect. First, the Commission substantially undercut it by permitting off network material to fill the access time during the first year of the new rule. Second, roughly 75% of all requests for "waiver" of the rule have been granted by this agency. Third, the rule has never enjoyed unanimous support either here or in the White House. (Recently the trade press reported three sure votes for repeal of the rule.) The White House continues its partisan wooing of certain segments of the Hollywood community and networks by promising favorable FCC action.

I hasten to add that I believe my colleagues when they say that no decision has been made, that the presumption favors retention of the rule, and that they are perfectly willing to listen to arguments as to why the rule should be retained and even expanded. And I believe they are going to be surprised by the degree of support the rule will command in this proceeding. I doubt that the rule will be scrapped, or that there will be a return to the status quo, and I will have more to say about this later.

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[1] Network Television Broadcasting, 23 F.C.C. 2d 382, 394–95 (1970).
[2] Mt. Mansfield Television, Inc. v. F.C.C., 442 F.2d 470, 478 (2 Cir. 1971) (footnote omitted).

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Another difficulty with this proceeding is the relative lack of information and analysis before the Commission regarding the basic facts surrounding this rule. As I have said over and over again, I believe this Commission simply must have a policy planning and analysis capability to provide the information necessary for rational decisionmaking. I would have hoped that this agency might have an analytic capability for an ongoing analysis of the structure of the television industry. Instead, we rely on not very systematic splurges in the Delphi technique, and we usually ask only those who have an economic interest in a policy outcome. But with the understanding that what follows is scarcely better than speculation, I think it useful to examine the effects of the rule on the principal groups affected by it.

Consumers. "Consumers" is the economist's euphemism for the viewing public. The quick and dirty analysis is that the apparent impact of the rule viewers are watching less television, and watching stations other than network affiliates. Perhaps, one might argue that therefore, consumers are watching programs (or doing other things) that bring them less satisfaction than the network programs did, and that there is therefore a net loss of consumer satisfaction. This analysis neglects some very hard questions about changes in consumer tastes and preferences, as well as problems with comparisons of interpersonal utility preferences.* And the evidence to support it is ambiguous at best. Counterbalanced against it is some evidence of increased choice, and more local programming. There is apparently some evidence of less network news and public affairs, and children's programming being deferred to later in the evening.

Networks. The dollar and cents effect appears minor, except that ABC, which supports the rule, seems to have been helped competitively.

Top-50 market network affiliates. This group appears to be better off financially as a result of the sale of commercials in purchased programming, rather than the revenues from network programs.

Smaller market affiliates. The networks might have elected to program this group for their affiliates in markets below the top 50. They choose not to. As a result, these stations have been adversely affected, although less than might have been expected.

Independent stations. There seems no doubt that these stations have been helped, in that they are now competing on a more equal footing with affiliates.

Program producers. Those who produce programs for the networks have probably been hurt; those who produce independent programming have been helped. There seems to be more imported programming in prime time—for whatever reason. And the overall budget for program production may have declined as lower cost programming is produced and shown.

The FCC. The objective of the rule—deconcentrating the television program production market—seems to have been achieved, although the magnitude of that achievement in the scheme of things is in question. The administration of the rule has created endless headaches, and simplified FCC administration plays no small part in generating the present proceeding.

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My own approach to this proceeding would have been to take a substantially different course. The majority is, in effect, conducting a "go-no-go" proceeding on a rule that is barely into a trial period. It sets rigid schedules for consideration, without knowing whether it or other parties are likely to be in a position to make a rational policy choice. The majority also apparently believes that it makes sense to consider a complete return to the network power situation that existed prior to 1970. Unless something has changed since 1970 in the basic competitive relationships in the television industry, I don't see how the Commission can return to that unsatisfactory situation. I see no evidence that such a change has occurred. The majority cites none.

Former Commissioner Cox, in his usual insightful way, predicted our current position when concurring in the adoption of this rule in 1970:

> If [the rule does not have the desired result], I think the networks and their affiliates may face even more drastic action. As indicated by its filings in this proceeding, the Department of Justice has serious concerns about the state of the market for television programming. If the Commission waters down its action here, or if the new rule does not in fact open up the market, then I think it possible that the Department will proceed under the antitrust laws to apply the policies developed in the motion picture industry to broadcasting. Or the Commission itself, if faced with the permanent prospect of a slowly constricting program production industry, may decide that the only alternative is to attempt some kind of detailed regulation of the networks' program practices.
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> I therefore hope that, after a necessary period of readjustment, the rule we have adopted will generate a substantial flow of new programming for sale direct to stations and cable systems, without passing through the network selection process. If it does, I think we will have a healthier television industry. If it does not, then I fear that the industry may very well undergo very serious changes in form and character.[3]

There is an antitrust suit pending in California, which followed an FCC waiver of the prime time access rule in major part for the first year, combined with an FCC stay of other aspects of its action which remained in effect for about a year after the rules were affirmed in court. I am not sure it is cause for industry celebration that the FCC is considering abandoning rules adopted to deal with a serious competitive problem.

I would not have turned this proceeding into a "go-no-go" rulemaking, nor would I impose a rigid decision making schedule, when it is not known that the facts necessary for a rational decision are going to be available. And if the rule is to be abandoned, it must be replaced with a substitute calculated to meet the problem of network power, and designed to accomplish more than would be accomplished if the rule were retained. It was for these reasons that I made certain suggestions to my colleagues for areas of inquiry to consider alternatives to the rule. Some were incorporated and I need not dwell on them. Many were not and I want to discuss them here in the hope they will generate thought and perhaps future consideration.

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[3] Network Television Broadcasting, 23 F.C.C. 2d 382, 427–28 (1970).

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Some concern was expressed that a more thorough proceeding would be delayed. But surely a graduated set of response dates would permit all the majority seeks in terms of time schedule.

To introduce the subject areas I believe warrant comments and inquiry, I should like to note some views expressed in 1970, at the time the prime time access rule was adopted. In the only telling portion of his dissent, Chairman Burch, in an opinion joined by then Commissioner Wells, said:

> [R]ather than spending years on a rule of this nature, the Commission must concentrate on the obvious alternatives which have a different economic base and thus make a genuine contribution to diversity. These alternatives do exist and have not yet come to fruition.
>
> First there is subscription television, which has a different economic base and and can present programming that is not necessarily designed for a mass audience and will still be economically attractive for an entrepreneur. There is cable casting, a technology which makes multiple channels available and which by its very nature changes the entire economics of programming. There is the noncommercial educational television system, which, with sufficient and appropriate funding, can make a tremendous contribution to diversity.[a]

Noble words and an inspiring program for Commission action. I might have endorsed it myself; it is certainly consistent with my oft-expressed preference for competitive solutions rather than regulatory ones. The statement seems to acknowledge that a serious problem exists. The only question is the best solution and how to bring it about.

But what has happened in the past two years? Subscription television, shackled with restrictions, is still non-existent, and the thrust of Commission policy is toward ever more stringent restrictions. Cable television is strait-jacketed in a policy born of a political deal calculated to blunt its promising competitive benefits—not to mention the morass of more than 1000 applications pending and stymied here. And public broadcasting is suppressed in a political power play and capture to which I heard no protest from the Commission majority. In each of these areas, the FCC abandoned any thought of a leadership position. I do not oppose the consideration of alternatives so long as it is not done as mere chicanery to effect delay and postpone solutions opposed by powerful interests.

If the problem, most broadly stated, is network domination, and if there is still interest in discussing alternatives, let them be considered. What follows are ideas. The majority refused even to include them in its notice. I neither support nor oppose them. But I do think they are worthy of inquiry.

(a) As an alternative means of increasing the number of buyers for television programming, and increasing the diversity of programming available to viewers, UHF stations (and vacant or unassigned UHF allocations) could be realigned into stations with significantly higher power, capable of serving wide regions, with the possibility of attracting audiences to compete with network affiliates, and the possibility of interconnecting them into a new network.

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[a] Network Television Broadcasting, 23 F.C.C. 2d 382, 416 (1970).

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(b) Networks could be required to allow every station in the market to bid for network programming on a per-program basis, giving every station an opportunity to acquire network programming. Independent producers would also compete for station buys without having to face a fixed network affiliation for major stations in the market.

(c) Networks could be required to allocate their prime time programming on a pro rata basis among all the stations in the market. For instance, if there were six commercial stations in the market, and three networks each programming four prime time hours per night (84 hours total network prime time per week), no station could receive more than two network hours per night, or 14 hours per week. The economic benefits of networking would be spread among *all* stations in the market UHF and VHF alike. Independent producers would also have a prime time market comparable to networks. New stations coming on the air would have an assured source of programming.

(d) Networks could be required to program no more than 25% reruns per year. This question is directly related to issues and questions concerning the prime time access rule, and should be considered with it.

(e) Networks could be required to divest themselves of television program production facilities and talent agencies as well as any remaining syndication activities domestically or in foreign markets. This agency has apparently made an informal decision, never actually considered by the Commissioners, to do nothing about the Department of Justice suit against the networks, although arguments are being made that the subject matter of the suit is a matter within the FCC's primary jurisdiction. I dislike the continuing erosion of the FCC's power to affect the industries it regulates, but certainly there is no more powerful argument for that erosion than inaction, or action that fails to meet public interest needs, whether it be under the Communications Act or the antitrust laws.

(f) A final alternative could involve a seeming strengthening of the networks' monopoly position in an effort to, in fact, reduce it. One of the oft-overlooked reasons for the "quality" of the BBC's programming is that it is not one network but two. Thus, the "opportunity cost" of putting on minority appeal programming is virtually eliminated. (Opportunity cost is an economists' expression for what you lose by choosing a particular course of action. When an American commercial network chooses to put on programming that does not maximize audience it not only loses the production costs of that program, it also loses the "opportunity" to make the much greater revenue that a mass appeal program would create.) If a diversity of programming is what is desired, that can be created by creating a monopoly as well as by eliminating one. For example, if a means could be found whereby an individual network not only could, but would be required to, program every *station* in a given market, the net effect might well be *more* diversity than that created by three networks, each trying to copy each other's efforts to attract the entire audience (and ending up with about one-third each). Mass appeal programming would undoubtedly go on one, two, or three of the channels. But even it would be counter programmed—that is, sports on one, a movie on another, and so forth. And the remaining channels

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would undoubtedly be programmed with minority appeal programming of various kinds—in an effort to attract to television persons who would not otherwise be watching any television at all, and thereby increasing the total television viewing audience for the network. In exchange for this seeming monopoly advantage, we could require that no network could program more than one hour a day, or whatever, to reduce the barriers to entry into the networking business and increase the number of networks. If there were hours when no networks were programming at all, the proposal would, to that extent, create a market for the programming of independent producers as well.

(g) Networks or stations could be required to present a certain amount of material designed for particular groups (see section b, paragraph 52 of the majority Notice) or news and public affairs each night or each week as a condition to a recision of the rule.

These are ideas I believe relevant to any consideration of where the FCC goes with the prime time access rule. No doubt there are others. No doubt some could be rejected quickly once they were subjected to detailed analysis. I express no preferences for any. Each has a similar goal to that of the prime time access rule, however, to improve the competitive, free private enterprise functioning of the television program production market. Several alternatives approach the problem from a wholly different direction than that of the prime time access rule.

The FCC ought to be in the business of freely exploring, analyzing, and testing the alternatives for the benefit not only of the viewing public but the industries and unions involved as well. Its refusal to do so prompts this dissent.

*"Utility preferences" is economists' jargon for describing the variety of tastes and desires of individual consumers. Any single viewer-consumer has his own preferences for television programming—as well as for a host of other ways in which he might spend his time. The difficulty arises when one tries to add together the preferences of large numbers of consumers to decide whether consumers as a whole are better off or worse off as a result of alternative sets of programming fare. Suppose the effect of the prime time access rule is to eliminate certain network programming and reduce the number of viewers watching any television program, or that different programs are watched than would be the case without the rule. Then, so the argument goes, the total consumer-viewer satisfaction is less than when the additional network programs were available. The problem with this analysis is that no one knows how much loss a viewer suffers by doing something other than watch television, or by watching one program rather than another. There is a question whether consumer satisfaction for individuals can be added at all. No one knows whether those viewers who stopped watching television, or shifted to other programs because of the prime time rule, are essentially indifferent to the change. Viewers who watch the programming that replaced network programming because of the rule may find the new programming greatly preferable to their prior alternatives. And even this analysis presupposes that television watching is a net consumer benefit. The viewer is not, of course, the consumer- he is the product

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sold by the advertiser (who *is* the consumer). Programming is virtually irrelevant in such a market analysis. (Various forms of subscription television, by contrast, *do* turn the viewer into a market place participant in the program selection process.) Nor is television watching necessarily a benefit at all. See the Kerner and Eisenhower Commission Reports, the Surgeon General's Report on violence in children's programs, *How to Talk Back to Your Television Set* and *Test Pattern for Living*. Mason Williams has said, "I finally decided the best I could do for television was not at all." After observing the industry's insensitivity to the impact of programming and commercials on small children (during the FCC's children's television hearings) I was prompted to recommend legislation to Congress making it a felony for anyone to keep a television set receiver in a home containing children under the age of six. In short, I am not sure that "utility preferences" is a concept that can contribute much to our analysis of the prime time access rule. But as long as we give Nobel Prizes in economics for the idea, the least the FCC can do is to hear it out.

Statement of Commissioner Benjamin L. Hooks Concurring in Part; Dissenting in Part

IN RE: Notice of Inquiry and Proposed Rule Making in Prime Time Access Rule Matter.

There is no question in my mind that a re-examination of the direction and effect of the "Prime Time Access" Rules is necessary and desirable. I concur in initiating this analysis.

However, inasmuch as we are focused on the subject of Prime Time broadcast fare, I would have specifically requested an exploration—through comments and otherwise—of the possibility of requiring that a certain share of Prime Time be dedicated to local news and public affairs should the present Prime Time Access strictures be extinguished. See, in this connection, Notice of Inquiry In re: Formulation of Policies Relating to the Broadcast Renewal Applicants, stemming from the Comparative Hearing Process (F.C.C. 71-159, Docket No. 19154 released February 23, 1971), 27 F.C.C. 2d 580 (1971).

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Comments of Westinghouse,
January 15, 1973,
Exhibit 5

Exhibit 5

GROUP W PRODUCTIONS, INC.

Title	Number of Episodes	Approximate Cost per Episode* Under $40,000	$40-50,000	$50-60,00
NORMAN CORWIN PRESENTS	26		X	
DAVID FROST REVUE-I	26			X
DAVID FROST REVUE-II	26			X
DOCTOR IN THE HOUSE	78	(distributed in U.S. by Group W Production		
TOM SMOTHERS' ORGANIC PRIME TIME/SPACE RIDE	13	X		
THE STREET PEOPLE	26	X		
RON MAGERS ELECTRIC IMPRESSIONS	26	X		

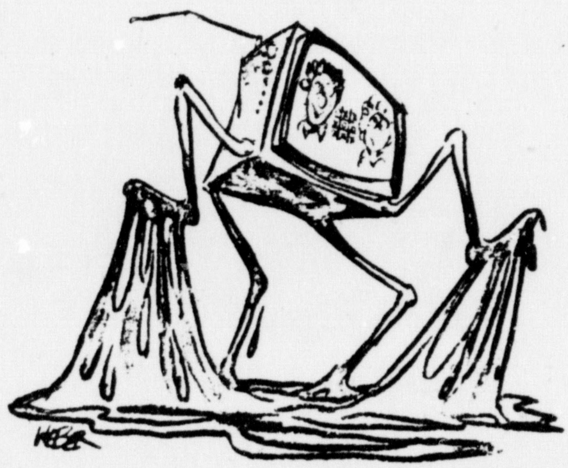
* Including all production and distribution costs

TV Guide, January 27, 1973, pp. 6-9

Report from a Quagmire

After a season and a half, the FCC's Prime-Time Access Rule seems to have produced nothing but problems

By Richard K. Doan



The Federal Communications Commission, the Government's regulator of the broadcasting industry, has its own little Vietnam to get out of gracefully and with honor.

It's called the Prime-Time Access Rule.

It all came about innocently enough: the seven-member commission simply wanted to curb the three big TV networks' "domination" of prime evening time. At first, FCC staffers proposed a 50-50 scheme, turning over half of these hours to independent, or non-network, program producers. The commission decided this was too drastic and settled for a seemingly mild compromise: one half hour a night on stations in the country's 50 biggest markets.

Section 73.658 (k) of the FCC rules, as Prime-Time Access is officially known, went into effect Oct. 1, 1971. The rule got its name from the fact it was supposed to provide access to the airwaves for program producers outside the networks. This, the FCC contended, would stimulate program "diversity."

A season and a half later, the rule has become a regulatory quagmire, almost wholly counterproductive as a creative stimulant, highly discriminatory in its industry impact, and hopelessly inflexible as a guideline.

Specifically, it has led to an appalling proliferation of cheaply produced game shows and revivals of long-gone network attractions. Thanks to FCC fiat, TV logs in city after city read like a page from the past: *Truth or Consequences*, *This Is Your Life*, *Stump the Stars*, *Juvenile Jury*, *The Price Is Right*, *What's My*

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Line?, *Hee Haw*, *Lawrence Welk* an others.

Indeed, probably the biggest access success of all (in 43 of the 50 biggest markets) is the frenetic *Let's Make a Deal*, characterized by one New York TV critic recently as "a show of such unbridled avarice that Mafia members are said to turn it off in disgust."

But while that may be the worst of it from the viewers' viewpoint, there is a graver consequence to the relationship of government and broadcasting. "There's no question we're in the programming business," says FCC Chairman Dean Burch, who has received a deluge of requests for waivers to the rule—for the Miss America Pageant, the Summer Olympics, among others. The commission has found itself slowly but surely being dragged into direct involvement in programming, a role the FCC historically has sought to steer clear of.

There have been side effects, too. Many stations are cramming up to six and a half minutes of commercials into the access half hour where the networks had only four.

Major Hollywood program suppliers have lost $50 million a year in network production lopped off by the rule, according to a study by the FCC's own "communications economist," Dr. Alan Pearce. Many of the access programs are produced outside of Hollywood, but if the commission imagined the rule would give birth to new programming enterprises, such hopes have faded. Dr. Pearce told TV GUIDE: "I don't know of a single company that has gone into business as a result of the rule."

NBC says the FCC cutback in its prime time not only has cost it millions, but has made it harder to book specials. NBC officials claim they scheduled fewer this season—an estimated 60-70; in 1970 the network had 120 specials. The viewers are the losers, they note.

How could the FCC have failed to foresee some, if not all, of these outgrowths of the rule?

That's what a lot of people in TV wonder, too.

Especially in view of the fact that Prime-Time Access, far from being an overnight regulatory concoction, was the culmination of a massive 10-year FCC study of network "programming practices."

It all turned out so badly, it appears, because a majority of the FCC members *over*estimated broadcasters. They seemed to believe that local TV managements would provide better, more diversified programming if only they had the opportunity.

The business, of course, doesn't work that way.

When the networks gave up 7:30-8 P.M. (ET) each evening, their 50 biggest outlets (the only ones ordered to abide by the rule) did what came naturally. With rare exceptions they hurried out and filled the time slot with the shows that would get the biggest audiences.

Many stations smartly opted for "all family" fare like *Lassie*, *Wild Kingdom* and *Circus!*

About a third of the stations "stripped" available diversions like *To Tell the Truth* (20 markets) and *Truth or Consequences* (9) four or five evenings a week.

Among 150 network affiliates in the 50 largest markets, only nine stations aired news across the board at 7:30 and only one (WCVB in Boston) appropriated nightly time for "public affairs."

True, an ad-agency survey turned up 62 different syndicated series kicking around in access time. That's the sort of diversity offered by "assorted ice creams" on a restaurant menu.

A couple of these even have won passably good notices from the critics. The New York Times' John O'Connor picked the British-made *Adventures of Black Beauty* and David Wolper's *The* →

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continued

Explorers as "a few, pitifully few, bright spots" in the 7:30 picture. But *Black Beauty* ran in only six of the top 50 cities and *Explorers* in five.

The aspect of the rule that has led the FCC into a regulatory thicket is its ban on two types of programming that stations originally grabbed to fill the access time: network reruns and movies that have been seen locally on TV in the past two years.

The movie ban, for instance, has embroiled the FCC in a question defining a "feature film." Does it include "movies" made for TV and never shown in theaters? If so, why isn't *Dragnet*, say, a 30-minute movie?

Abashed by the low-grade fare that their own ruling has encouraged, the FCC has eagerly granted waivers to the sort of programs they had hoped to encourage in the first place.

Example: *Wild Kingdom* was exempted from the rerun ban because it's a "factual presentation"; but *Lassie* was denied a waiver. The *National Geographic* documentaries at first were refused a waiver—but later granted one because they're factual, too.

Example: reruns of the BBC's *Six Wives of Henry VIII* were okayed as "distinctive and meritorious," but the FCC declined ABC's request for extra Olympics coverage.

Such adjudicating between one program and another alarms many people.

One of them is the FCC's chairman, who opposed the rule from the start but was outvoted by his colleagues. The waiver situation alone, Burch says, is "just ridiculous." But the whole controversy raging over the rule at this point, he said, boils down in one respect to this: "Those profiting from it are for it; those losing money are against it."

It's generally agreed in the industry that that's the case. The big-city stations are cashing in; stations in smaller localities—where budgets are smaller and sponsors harder to find—are losing money. Non-network stations, free to run all the network cast-offs they wish, are reaping a ratings and revenue harvest. Some marginal UHF stations are also grabbing bigger audiences with off-network shows and movies.

The rule has been a boon also to one of the networks. It enabled ABC, traditionally third in a three-way race, to unload less popular, lightly sponsored shows and attain better "parity" with CBS and NBC.

And finally, of course, the access era has been a bonanza for a handful of producers, notably Goodson-Todman, the once ailing game-show kings (*Line*, *Secret*, *Truth*, etc.), now once again in the chips; and Monty Hall, whose *Let's Make a Deal*, for all its esthetic sins, is access time's hit.

For all the evidence against the rule, its supporters within the FCC are not ready to scuttle it.

They've ordered a full-scale review of its pros and cons and frankly hope to salvage it.

Countless notions for making the rule work have been proposed:

Limit stations to 21 hours a week of network fare, but let them apportion it nightly to suit themselves (from Commissioner Robert E. Lee).

Encourage early-evening children's shows by exempting them from the rule (from Commissioner Nicholas Johnson).

Exempt programs aimed at minorities (from the FCC's first black member, Benjamin L. Hooks).

Limit network programming even more —to, say, two and a half hours nightly, and apply this limit to all cities, not just the top 50.

Extend the ban on network reruns and movies to the independent stations ("and *then* let's see how strong *they're* for the rule," suggests Chairman Burch).

Exempt news and public affairs.

Make stations devote one or two half

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hours or even all of their access time to locally produced programs.

Then there are proposals like turning back the time to the networks, stipulating that they must devote the restored 30 minutes, or its equivalent, to prime-time news and public affairs.

A Hollywood labor union's campaign for a cutback in network reruns—an issue on which the Administration has publicly sided *against* the networks—has become a factor in the access-time debate. One speculation: the FCC might void the access rule in return for a reduction in network reruns. That idea gives networkers the shudders. They'd like their half hour back, all right, but not at the cost of more first-run shows.

Chairman Burch's feeling is that his fellow commissioners face a basic question. "They've got to decide," he says, "*what* it is they're trying to accomplish." If it's more locally produced programming, he suggests, "then perhaps we'd better say so." But if it came to that, he added, the few syndicators profiting from the rule would also turn against it, as would, doubtlessly, the stations themselves, "and *nobody* would be in favor of the rule *except* the commission."

Whatever the outcome, the networks have resigned themselves to living within the rule at least through next season. Some industry quarters gloomily foresee no repeal, for all the rule's flaws, simply because a regulatory agency hates to admit a major mistake.

Dr. Pearce, as the FCC's top in-house adviser on access time, professes to carry no torch for the edict but intimates that it will survive. Some of its supporters, he notes, argue that the rule ought to be given a five-year trial. Why it should need that long to prove its worth—when most network shows get only 13 weeks—eludes him.

Anyway, he smiles, "Five years from now, people will probably be asking, 'Prime-time access? What's that?' " (END)

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Final Report, "The Economic Consequences of the Federal Communications Commission's Prime-Time Access Rule on the Broadcast and Program Production Industries," by Alan Pearce, Communications Economist, Office of the Chairman, September 1973, pp. 10-14

C. The independent licensees want to keep the rule because it has presented them with opportunities to make short-term gains in ratings, revenues, and profits. The rule might harm them long-term, however, as the supply of off-network Hollywood produced syndicated programming, on which their existence depends, begins to decrease and, because of supply and demand, to cost more.

D. Most of the network affiliated stations in the top-50 markets, and many in markets below the top-50, want to keep the rule, as does ABC. NBC, at first opposed to the rule, is now neutral.

E. The independent producers of taped programs, mostly game shows, want to continue the so-called prime-time access 'experiment,' as do the importers of foreign made television series.

POSSIBLE POLICY ALTERNATIVES:

If the main purpose of the prime-time access rule was to lessen network control of the airwaves, and since this purpose seems to have been defeated in the sense that the networks, and their five owned and operated stations, still dominate television broadcasting in America, perhaps some overall policy alternatives ought to be investigated and given further research emphasis by the FCC, and other governmental and non-governmental bodies in the future:

1. Some consideration might be given to the overall extent to which the networks allegedly dominate television broadcasting. Each network has five owned and operated stations in top markets. All three networks have owned stations in New York, Los Angeles, and Chicago--

the first, second, and third largest markets in the U.S. accounting for something like 19 percent of the total television households. ABC has its other two owned stations in the sixth and seventh largest markets, San Francisco and Detroit, respectively, which account for a further 4.7 percent of America's television households. CBS has an owned station in the fourth largest market, Philadelphia, and in the twelfth, St. Louis, which together account or another 4.8 percent of the nation's television households. NBC has its other two owned stations in the eighth and ninth markets, Cleveland, Ohio, and Washington, D.C., respectively, which together account for 3.8 percent of television households. Consequently, ABC has access to almost 24 percent of the nation's television households through its owned and operated stations; CBS also has access to almost 24 percent of total television households; while NBC has access to almost 23 percent of total television households. (National television spot revenue, however, is disproportionately higher in the O & O markets, ranging from 32 to 35 percent of the national total, but part of that is due to the fact that there are more stations, and competition is fiercer, in the larger markets. Not only are the three networks a tripoloy in the distribution of programming nationally, they also own the three most powerful groups of stations. These two factors, in addition to their program making functions, make them the most powerful instituions in American broadcasting today, and critics claim that it is that power, concentrated in a few hands, that has inherent and potential anti-trust dangers. If, after research and investigation, that is deemed to be the case, then the networks could be made to divest themselves of one or all of their owned and oper.

stations. There is need for careful consideration of this possible policy alternative, however, since the networks have argued quite forcefully that the reason they are able to be innovative and experimental in their programming, and to be the major suppliers of costly national and international news, instant news specials, documentaries, and sports programming, is because of their financial strength in American broadcasting. If the networks were made to divest themselves of their owned and operated stations, their financial power would be weakened, perhaps seriously, and such programming mentioned above would, probably, suffer. In addition, economists still differ about the alleged dangers of vertical integration and the networks may be able to put forward compelling 'public interest' arguments for having the control they have.

2. The FCC could work more closely in support of the Justice Department's anti-trust suits against the three networks. The intent of these suits is to get the networks out of the entertainment program making business, i.e., programs other than news, public affairs, documentary, and sports. These suits are based on the fact that the networks produce and distribute programs and buy programs from companies that do not own any distribution facilities, yet have to compete with the networks in the sale of programming. This situation has anti-competitive dangers in the sense that the networks can, theoretically keep down the price of entertainment programming supplied by independent production houses based on the networks' assumed capacity to extend their own production should the independent suppliers prices become too high. In their defense, the networks say they need tape facilities for their news and sports programming, and, since tape

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facilities were first developed by the networks as an extension of live television, they should be left untouched because they are essential to network operation. In the area of film, the networks say they need to be free to experiment with, and develop, their own sources of programming. The networks' also claim that owning facilities is different from owning programs, and they now own very few programs.

3. The FCC could investigate ways of strengthening the nation's independent VHF and UHF stations allowing them to compete more effectively with the three networks. Policy favoring development of a fourth network is handicapped by a shortage of markets within independent VHF stations--only 14 of the top-50 markets have an independent VHF station.

4. Consideration might be given to the ways and means of financing and enhancing the public television network as a viable alternative to the commercial networks.

5. The newer technologies, for example cable and pay television, could be encouraged and stimulated in an attempt to establish another competitive broadcasting system that might be able to meet the programming needs of minority audiences in a more efficient manner.

The networks' could argue that it was never the intention of the prime-time access rule to make structural changes in the broadcasting industry, and that the above policy alternatives are thus irrelevant. The rule, they say, was merely intended to take away from the networks a daily half-hour and hand it over to their affiliates. In this case,

the rule has been successful.

The remainder of this report will be devoted to a detailed analysis of the economic consequences of the prime-time access rule on the various interested parties.[1]

SECTION II: THE NETWORKS

INTRODUCTION

As we have seen, the three networks--ABC, CBS, and NBC--dominate television broadcasting in America. Seven days a week, year round, the networks offer programming during most of the day to their local affiliates in roughly 200 markets throughout the country. The networks buy or produce this programming, and sell commercial minutes within this programming, which is then aired by their local affiliates. In return, the local affiliates are paid what is known as station compensation--usually roughly a third of what they could get if they took an additional risk and programmed their own material--and they are also allowed to sell short segments of time in the network programming, known as station breaks or adjacencies, which are often very valuable because of the higher rating levels of many network shows.

All three networks usually carry fewer minutes of advertising than are allowed under the National Association of Broadcasters Code:

[1] AUTHOR'S NOTE: Much of the detailed information presented in this report was given to the author by confidential sources who prefer not to be identified in footnotes. Most of them have agreed to have their names included in the list of people interviewed--See Appendix I.

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METROMEDIA TELEVISION
485 LEXINGTON AVENUE / NEW YORK, NEW YORK 10017 / TEL: 212-682-9100

R. KENT REPLOGLE / PRESIDENT

August 8, 1974

Dr. Alan Pearce,
Communications Economist
Federal Communications Commission
1919 M Street N. W.
Washington, D. C. 20054

Dear Alan:

Following up on our phone conversation of today, I am enclosing some information which I think is significant in the economic considerations vis-a-vis the Prime Time Access Rule.

As I indicated to you, Metromedia Television in assessing the impact of the access rule is now very much opposed to its continuation. In addition to the economic information which you will note on the enclosed sheets there is also the consideration of the kinds of programming that is occurring in the access period which we think is not in line with the hopes of those who previously favored the access rule. As the enclosed data will show using the Los Angeles market as an example there was an additional $5,000,000 spent in Los Angeles in spot television in 1973 versus 1972. Not only did the network stations get all of that increased dollars but indeed the independent stations lost $1,760,000 in addition giving the network affiliates a gross increase of $6,761,000. There is no doubt in our mind that the ability of the affiliates to use the extra inventory access provided to combine with prime time and news spots is the primary reason for their significant increase and the indies decrease in 1973.

Indeed our year-to-date figures through May of 1974 also shows that the market is almost $1,400,000 behind 1973 yet the independent stations are almost $1,900,000 behind their 1973 billing.

The implications are quite clear, with an additional two to two hundred fifty 30 second announcements available on the affiliated stations per week and since they are as a practical matter the first stations to be bought and since they have learned to package those announcements in access with the rest of their desirable inventory; the economic impact on the independent stations is considerable.

I would like to quote to you a paragraph from Coleman and Co., a New York stock exchange firm's "Broadcasting Industry: 1974 Mid-Year Review and Outlook" -

"An exception has been independent (non-network affiliated) stations, while ratings for independents generally rose because independents were allowed to show more popular off-network reruns and affiliates were not the latter were often able to bury the access period inventory in attractive packages of local news spots or adjacencies to hit network shows. Independents are still viewed in a somewhat secondary way by many agencies, and they generally get cutback first and restored last when there are cycles in television advertising. The access rule by increasing inventory in attractive time periods, has apparently compounded the volatility of the independents."

Another paragraph which follows the one quoted above also is relevant to independent station operation. It reads as follows:

"The Prime Time Access Rule has also had a significant effect on the expense side of broadcasting. At the station level, competition for the relatively few successful shows produced for the access period, and the effect of product needs caused by increased inventory has led to some big price increases in syndicated programming, which, as we mentioned before, has intensified because of the recent abrupt change in conditions for the '74-'75 season. Also there have been fewer long running hit network shows coming into syndication in recent years because there are fewer programs on, and the networks have increased non-series programming...."

Dr. Alan Pearce
FCC

We certainly have felt in Metromedia Television the effect of shorter supply of programming. Asking prices for syndicated shows which are an extremely important part of any independent's program schedule have more than doubled in the last several years. It's not hard to see the significant effect that increased prices of program product and declining revenues has on independent stations.

There is no doubt in my mind of the economic effect of access. Surely the silence of affiliates on the matter loudly pronounces their favor of it.

Additionally, in a survey we recently did in the top 25 markets the Monday through Friday 7:30-8 PM time period shows only 3% of the programmed half hours consisted of public affairs programming excluding news and only 13% counting news. The point being that if the public is to be treated to entertainment programming in the half hour time period from 7:30-8 it is our opinion that they ought to be treated to the very finest programming that can be made available to them in the entertainment mode and that obviously comes from the networks.

I shall be more than happy to discuss any and all of these matters in further detail at your convenience.

Regards,

Kent

KR:mj
Encl.

CC: A. Krivin, T. Dougherty
C. Young, E. Shook, W. Carpenter,
H. Protter, L. Fraiberg, R. Fransen

L. A. 1973 VS 1972

	% Change	Actual Dollar Change (000)
Network Stations		
National Sales	+7.42%	$3,369
Local Sales	+8.68%	3,412
Total	+8.00%	$6,781
Indies		
National Sales	-6.11%	- $1,289
Local Sales	-1.57%	- 471
Total	-3.44%	- $1,760
Market		
National Sales	+3.13%	$2,080
Local Sales	+4.24%	2,941
Total	+3.70	$5,021

Avg. access rate $600 @ 75% sellout = $5,382 - no significant rating change - access a little stronger on indies.

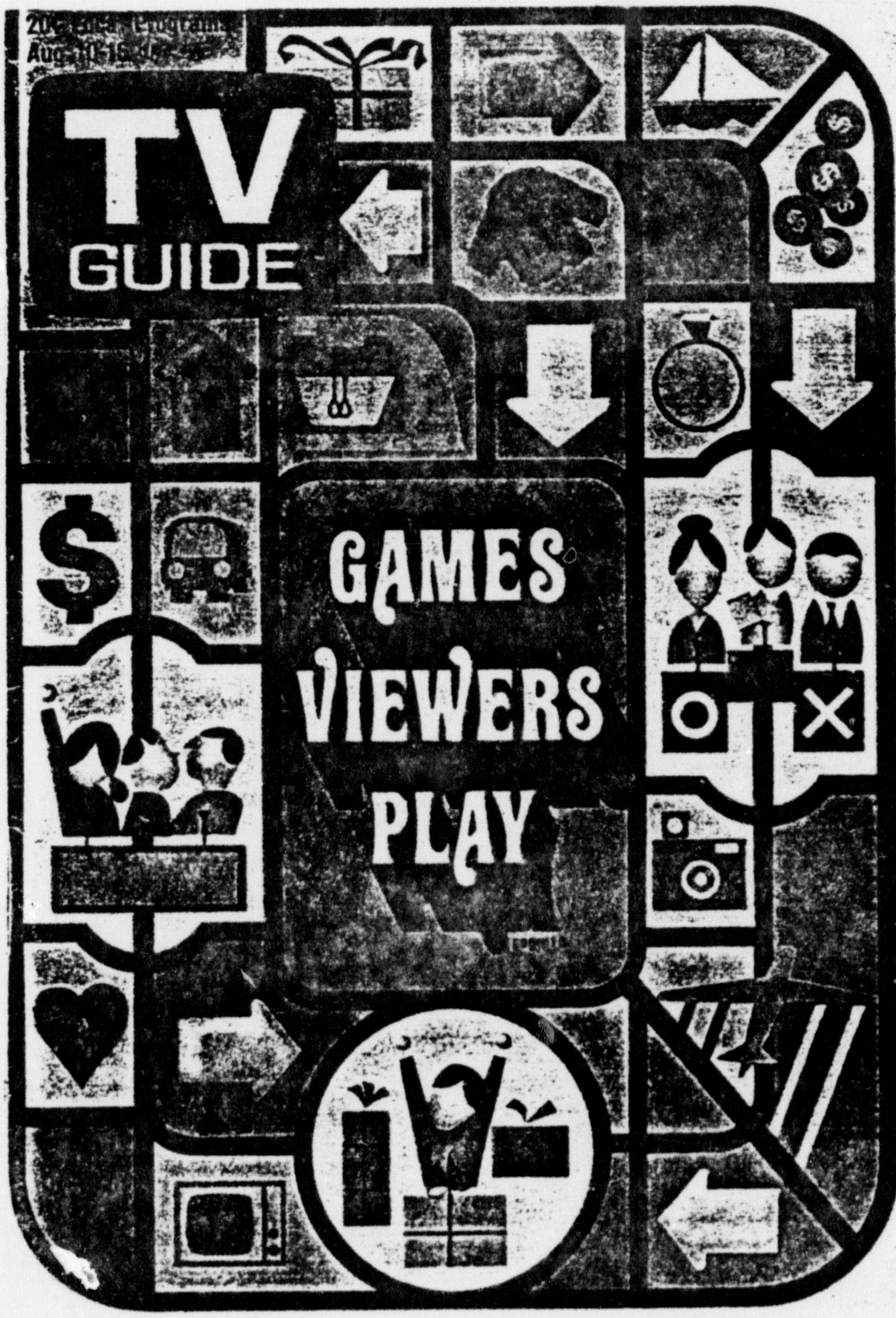
YTD 1974 THRU MAY

(000)

Net Stations	Total	-$505
Indies	"	-$1,875
Market	"	-$1,370

Nets	-2.29%	
Local		+2.25%
Nat.		-7.10%
Indies	-8.87%	
Local		-8.88%
Nat.		-8.85%

(excludes network compensation)


TV
GUIDE
GAMES
VIEWERS
PLAY

What Do You Mean IT'$ ONLY A GAME?

Certainly not on television, where games are very serious—and very profitable

By Neil Hickey

In the beginning there was "Break the Bank" and "Chance of a Lifetime" and "Stop the Music" and "Take It or Leave It" and "The $64 Question" and "Dr. I Q" and scores of others—all of them vastly popular ornaments of the great age of network radio. And then, as television transfixed us during the 1950s, the TV game show burst forth from its cocoon. Currently, an estimated 10 million viewers spend an average of 1¼ hours a day exulting with an endless parade of contestants, experiencing vicariously their thrill of victory and their agony of defeat.

As a program form, the TV game show is enjoying a Golden Age: a record number of them (18) are broadcast daily by the three major networks, and another 14 (e.g., *What's My Line?*, *To Tell the Truth*, *Concentration*, *Truth or Consequences*) are syndicated to local stations. Three game shows—*Hollywood Squares*, *Let's Make a Deal* and *The Price Is Right*—have achieved such transcendental popularity that they are visible by day on the networks *and* syndicated for prime-time use to hundreds of local stations.

NBC recently added three newly created giveaways to its daytime schedule and now has six consecutive game shows from 10 A.M. to 1 P.M. CBS, for its part, had no game shows at all from 1968 to 1972 but recently hopped on the bandwagon and now has six. Reruns of old situation comedies—once a staple of daytime TV—have all but vanished from the air.

What's behind this bull market in televised parlor games? From a TV executive's viewpoint, the answer is simple: game shows are cheap to produce (about half the cost of a good soap opera) and enormously profitable. Sponsors eagerly line up for a crack at that key 18-to-49-year-old female homemaker who controls the family purse strings for the purchase of washday miracles, furniture polish, pain killers, convenience foods, denture adhesives,

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false eyelashes, girdles, deodorants, laxatives, air fresheners, pet food, rug cleaners, diet colas and corn remedies.

While soap operas are considered more valuable to a network in the long run than game shows (they attract a somewhat younger female audience), they also require a year or more to build a following sufficiently loyal to ensure their survival. (Says one network executive: "It takes a spunky programmer to make that kind of commitment.") The pulling power of a game show, on the other hand, is apparent in a matter of weeks, and it can be either junked or renewed with a minimum of fiscal trauma. A soap opera ordinarily costs $70,000 to $75,000 a week to produce, while an average game show costs $35,000 to $50,000 a week.

Thus, for all their packaged and plasticized hilarity, game shows are serious business: networks derive an estimated 50 to 60 per cent of their profits from their daytime blocks, and three-network gross revenues for that period (roughly 10 A.M. to 4:30 P.M.) are approaching $600 million a year.

As to why audiences like game shows—well, that's more difficult to pinpoint. "A viewer can sit at home, watch a game show and forget his problems because he is involved with the game," says Allen Ludden, longtime host of *Password*. Lin Bolen, NBC's vice president for daytime programming, says that game shows "do not demand a great deal from the players at home. They are entertained and stimulated without a major commitment on their part. A woman can go to the laundry room, come back in five minutes, and go right on watching the game."

Says Mark Goodson of Goodson-Todman, the biggest, richest and →

continued

oldest suppliers extant (nine shows currently on the air, including *The Price Is Right*, *Match Game '74*, *Password* and *Concentration*): "Nobody really knows what it is that makes people tune in to game shows. Maybe it's the Cinderella ingredient: the fun of watching somebody make it big. One thing I feel sure of: very little of game shows' appeal is based on greed. There may be such a thing as vicarious sex, but I don't think there is vicarious greed. If you were starving to death, would you tune in a TV show to watch somebody eat?"

A different view is held by gamesman Chuck Barris (*The Newlywed Game*, *The Dating Game*, *The Parent Game*, et al.), who believes that greed is the powerful magnet that attracts both audiences and contestants to such shows as *Let's Make a Deal*, *The Price Is Right* and his own *The New Treasure Hunt*. "These shows bring out the worst in human beings, and reduce them to a state that isn't very attractive to see. We make a strong appeal to the greed in them. They agonize, they cry, they hyperventilate. And we show all that.

"It doesn't bother *me* that we show it, because I'm hypocritical and greedy enough myself to want to make money out of it," Barris said, perched one day recently in the Plaza Hotel's Oak Room, sipping a Shirley Temple. "If I felt strongly enough about it—which I don't—I'd take my shows off the air." He added, grinning boyishly: "Somebody recently called me 'The King of Slob Culture'."

What *makes* a good game show, anyway? Is there a secret ingredient that's common to all the successful ones? Says CBS's Bud Grant, vice president of daytime programming: "It's the capacity of the home audience to participate, in one fashion or other, in the game. That's vital." Says Monty Hall, of *Let's Make a Deal*: "Involvement. You've got to involve the audience to the degree that they're testing themselves on the game to see if they can play it. Or perhaps they're involved because they're identifying with one of the contestants, or because they're emotionally involved, like spectators at a sporting event."

Game shows, say the experts, are extraordinarily difficult to dream up. Goodson-Todman gets its ideas, says Mark Goodson, "by agonizing, sweating, free-associating. It takes months of pounding away. You try to come up with a novel concept or one with such a pronounced switch that it seems new."

Only 50 to a hundred people in the whole country have an instinct for this kind of activity, Goodson claims, and "only about 25 of those are really any good." His own all-time favorite game show is *To Tell the Truth*, which he calls "a textbook idea of a great game."

Dealers in this entertainment form tend to divvy up game shows into four main categories: The Greed Show (*Let's Make a Deal*, *The Price Is Right*, *The Joker's Wild*, *The New Treasure Hunt*), in which contestants are prompted to parade their lust for big prizes and cash money. Then there's the People Show (*The Newlywed Game*, *To Tell the Truth*, *I've Got a Secret*, *What's My Line?*, *Tattletale*), which depends on whatever fun can be extracted from human foibles, differences and eccentricities.

The so-called Hard Quiz program (*Jeopardy!*, *Split-Second*) requires that contestants be knowledgeable, rather than merely zany or good guessers. Finally, there's the Celebrity Show (*Hollywood Squares*, *Match Game*, *Celebrity Sweepstakes*), which relies on lots of humorous by-play among supposedly witty celebrities.

In fact, a certain kind of semi-celebrity is an important ingredient in many of the game shows currently on the air. Says one major packager: "Where does a glib, ad-libbing actor go to make a living these days? Many actors and actresses are eternally 'between jobs,' and they're only too happy to earn their bread by sitting on a panel and making flip remarks." →

But it was the "hard quiz" format that got TV game shows into hot water in the late 1950s, and almost quashed them for good. Cash prizes in the hundreds of thousands of dollars were being handed out on prime-time shows like *Twenty One*, *The $64,000 Question*, and *The $64,000 Challenge*. Disclosures of collusion and "fixing" erupted in the quiz-show scandal that drove all the high-stakes programs off the air amid public outrage over such blatant duplicity. They have never made a comeback in prime time although there have been a few brief efforts to revive them.

Nobody expects the high-stakes, hard-quiz giveaways to be resurrected, but even if they were, there now exist tough safeguards against hanky-panky: it's a Federal offense ($10,000 fine and/or one year in prison) to tamper with a game show. And the networks police themselves to the edge of paranoia. "They're uptight about it all the time," one packager declares. "They hang over our shoulders and drive us nuts. TV audiences have long since forgotten about the quiz-show scandals. The networks will never forget."

Game-show prizes, by the way, are a subject unto themselves. They come in three classes: 1) smallish prizes valued at a few dollars (packages of food, furniture polish, etc.), for which the manufacturer pays to have the product mentioned and given away on the air; 2) expensive prizes (cars, motor homes, etc.) purchased outright from manufacturers with revenue earned from category 1; and, 3) middle-range prizes procured in dollar-for-dollar trade-offs (no money changes hands—the manufacturer donates the item in exchange for an on-the-air mention).

Two networks—CBS and NBC—have in-house departments specifically set up to solicit and purchase prizes for all the game shows they broadcast. Companies making shows for ABC → obtain their own prizes. Prize procurers are called (affectionately, in the trade) "Schlockmeisters."

Yet another intriguing aspect of the game-show phenomenon is that peculiar breed of human being—glib, brisk, incurably affable—called the game-show host, all of whom appear to have been bred for the part. (There are no game-show "hostesses," by the way; the profession continues as an all-male redoubt.)

"Aside from their cheery dispositions and hearty laughs, all game-show hosts have one other important thing in common," says a prominent producer. "They are all rich." The top earners—men like Bob Barker, Peter Marshall, Jack Barry and Gene Rayburn—command up to $5000 per week, 52 weeks a year (no reruns). And that's for one day's work a week, since most shows tape five programs in one day."

What makes a good game-show host? "The ability to take charge, to run things," says Mark Goodson. "Affability is least important. I can get affable people for 10 cents." There are 10 or 15 really good hosts, he says, and they're getting harder to find because most of the current crop came out of the great days of network radio.

The skills a host needs, Goodson believes, are most closely allied with those of a TV newscaster. "I could take Dan Rather, for example, and turn him into a great game-show host. Don't forget that Walter Cronkite was, in fact, the host of a TV game show back in 1954 called *It's News to Me*."

The game-show phenomenon appears destined to dominate daytime television in the forseeable future. Professional TV critics almost unanimously pronounce game shows the most primitive and banal form of televised entertainment. Thus, they either ignore them completely (as being beneath criticism) or clobber them with salvos of contumely as "an appalling and cynical use of the public's airwaves."

But the networks are impervious to criticism on this front partly because (as Ed Vane, an ABC programming executive, puts it): "On a ratio of profit to investment, game shows are far and away the most lucrative kind of TV programming." And because the massed brainpower of the television industry has been unsuccessful in devising any other program form (besides soap operas) that can attract viewers in sufficient numbers over the long haul to satisfy advertisers. Thus, the networks have mutually descended to competing at the game-show level during the daytime hours.

"It's a great mystery!" says Bob Stewart, one of the most successful of game-show creators (*The $10,000 Pyramid*, *Jackpot*, and the newly minted *Winning Streak*). "Why can't somebody dream up a new format that could attract enough people to survive? It doesn't seem right." Talk shows, variety shows, 90-minute dramas and reruns of old situation comedies have all stumbled in the daytime sweepstakes. As a result, more creative energy is now being ploughed into fabricating new, more piquant TV games than into the search for innovative daytime forms.

Chuck Barris suggests that any strong human emotion might be the gimmick for game shows of the future—although greed will probably always be the front runner. "I can imagine a game based on hate, for example—or fear," says Barris, unsmilingly. "Your basic packager would quickly devise such shows if he thought he could get them on the air." A novel called "The Game Show Man," currently in Barris's typewriter, is all about an enterprising producer who figures out a way to murder contestants as part of his TV game, and thus build excitement and ratings. "And *that's* the ultimate game show," Barris mused, and took a long contented swig of his Shirley Temple. END

As We See It

☐ Some editorials write themselves. Like the one on page 16 of this issue—which didn't start out in life to be anything more than a shockingly candid statement by TV-show producer Chuck Barris.

Speaking of *Let's Make a Deal*, *The Price Is Right*, and his own *New Treasure Hunt*, Barris says: "These shows bring out the worst in human beings, and reduce them to a state that isn't very attractive to see. We make a strong appeal to the greed in them. They agonize, they cry, they hyperventilate. And we *show* all that . . . It doesn't bother *me* that we show it, because I'm hypocritical and greedy enough myself to want to make money out of it. If I felt strongly enough about it—which I don't—I'd take my shows off the air." Then he added, grinning: "Somebody recently called me The King of Slob Culture."

☐ Mr. Barris comes by his title honestly, for he is also the man who gave us *The Newlywed Game* and *The Dating Game* and it is sometimes difficult to decide which of these shows is slobbier than the other. But many of us are convinced that, in their weekly multimillion contact with the American public, both do a steadily efficient job of cheapening our values, coarsening our mores and accustoming our young audiences to a kind of official tawdriness of social behavior. For bluntness, honesty and lack of a sense of social responsibility, Mr. Barris rates 100 per cent.

To the network executives who allow Mr. Barris and what he stands for to become such a prominent element of telecasting, we'd suggest that they re-examine the responsibility they hold to entertain and inform the American people. We believe that responsibility also includes an obligation to preserve taste and prevent further degradation of the culture that is currently so vulnerable to their marvelous instrument.

TV GUIDE EDITORIAL

8/10/74

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Consideration of the Operation of and Possible Changes in, the Prime Time Access Rule, Section 73.658 (K) of the Commission's Rules	))))	Docket No. 19622

FURTHER COMMENTS OF METROMEDIA, INC.

METROMEDIA, INC.
5151 Wisconsin Ave., N. W.
Washington, D. C. 20016

Thomas J. Dougherty
Preston R. Padden

Its Attorneys

September 20, 1974

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Consideration of the Operation of and Possible Changes in, the Prime Time Access Rule, Section 73.658 (K) of the Commission's Rules	)))))	Docket No. 19622

TO: THE COMMISSION.

FURTHER COMMENTS OF METROMEDIA, INC.

Metromedia, Inc. ("Metromedia"), by its attorneys, hereby submits its Comments in response to the Further Notice Inviting Comments ("Further Notice") (FCC 74-756, Mimeo No. 18418), which was issued in the above styled proceeding on July 17, 1974.

I
INTRODUCTION

1. Metromedia is a diversified communications and entertainment corporation which is licensed by the Commission to operate one UHF independent station, four VHF independent television stations, and one VHF network affiliated television station.[1/] In addition, Metromedia Producers Corporation produces and syndicates both program series and feature films for television exhibition.

1/ The Metromedia television stations are WNEW-TV, New York; KTTV, Los Angeles; WTTG, Washington, D. C.; WTCN-TV, Minneapolis; KMBC-TV, Kansas City, Missouri, and WXIX-TV, Newport, Kentucky-Cincinnati, Ohio.

2. As the Commission's records will indicate, Metromedia has been one of the principal proponents of the Prime Time Access Rule. Since the rules adoption Metromedia has argued before the Commission and before the Courts that the Access Rule should be given a fair chance to succeed. Consistent with this commitment, Metromedia Producers Corporation produced and sold a number of half-hour program series designed for exhibition in the access period. These programs included "Primus", "Elephant Boy", "Dusty's Trail" and "Jeopardy". Metromedia Producers Corporation had also planned to introduce other access programs including an hour long "Merv Griffin" program. However, because of the uncertainty surrounding the continuation of the rule from season to season, these plans had to be abandoned.

3. At this point in time, Metromedia can no longer continue to support the Prime Time Access Rule. The rule has wholly failed to diminish the power of the networks over prime time television. Moreover, the rule has been counter-productive in that it has worked to the disadvantage of the only real challenge to network dominance - independent television. By undermining the economic base of independent television stations, the Access Rule has reduced the ability of those stations to compete effectively with the networks. In sum, Metromedia has reluctantly concluded that the Prime Time Access Rule should be repealed.

III
THE ACCESS RULE HAS BEEN COUNTER-PRODUCTIVE

4. Unfortunately, this proceeding has become unnecessarily complicated and the goals sought to be achieved by the rule have become obscured. The purpose of the Access Rule was actually to lessen network domination of prime time television. See Further Notice (at ¶6). As a consequence, the only relevant consideration at this point is whether the Access Rule has proven to be a successful tool in this regard. It is submitted that this question must be answered in the negative.

5. First, the rule has obviously failed to achieve its primary objective. It has not resulted in the development of healthy independent program syndication. The reasons for the rule's failure will undoubtedly be debated for years. Metromedia believes that the constant threat of review, revision and repeal created an economic atmosphere which contributed substantially to the rule's failure. Metromedia, for one, made substantial investments in program development and sales. These investments were repeatedly jeopardized by the atmosphere of uncertainty which has surrounded the rule for all of its life.

6. In addition, there was a secondary benefit which the Commission believed would flow from the rule. That was the belief that the rule would work to the benefit of independent stations generally and UHF independents in particular. See Prime Time Access Rule, 18 R.R. 2d 1825, 1842-1844 (1970). However, Chairman Burch and Commissioner Wells

did not share this belief. They argued that the rule would actually work to the disadvantage of independents. See Prime Time Access Rule, 18 R.R. 2d at 1853. As recently as January of this year, it was obvious that the Commission was of the opinion that the rule had in fact worked to the advantage of the independents. Moreover, the Commission viewed this supposed advantage as "probably.....in the public interest". Prime Time Access Rule, 29 R.R. 2d 643, 697 (1974).

7. Like the Commission, Metromedia was formerly of the opinion that the rule would benefit independents.[2] However, like at least one of the larger broadcasting operations, Metromedia has been compelled by the gallop of history to revise its position with regard to the rule.

8. The practical economic effect of the Access Rule was to dramatically expand the supply of advertising positions available for local and national spot sales by network affiliates. As these stations gained more experience under the rule, they developed sophisticated packaging techniques which enabled them to combine the access inventory with other spot positions with the result being a dramatic increase in the affiliates share of the market dollars. For example, affiliates

2/ We are, of course, aware that some independent operators still view the rule as benefitting them. While this may appear to be true for some markets and during some time periods, taking a long range view of the workings of the rule, it is our opinion that it will ultimately work to the financial detriment of the independent broadcaster and will make him less of a pro-competitive force.

have only a limited number of local positions within the highly rated network prime time programming hours.[3/] These positions are often sold in four-week orbits entitling the advertiser to one prime time spot per week. By packaging three network prime time spots with one access time spot, the affiliates stretch the limited number of network adjacencies and sell more four-week orbits. Similarly, the affiliates combine their late and early local news spots with access positions and thereby get more mileage out of their news positions. In addition, the affiliates utilize their access inventory to sweeten packaged presentations which might not have otherwise met with advertiser approval. See attachments I and II.

9. The results of the increase in local inventory and the development of packaging have been dramatic. Independent stations have suffered severely vis-a-vis their affiliated and owned and operated competitors in the battle for spot television business. This is a fact which can be demonstrated with actual revenue figures. In 1973, advertisers spent $5,021,000 more on spot television in Los Angeles

3/ Obviously, the independents have no spot positions within or adjacent to highly rated network programs because they are denied the right to bid for these programs by the terms of the network's exclusive affiliation agreements.

than they did in 1972.[4/] The three network owned and operated stations absorded this entire increase. The independent stations were unable to acquire any part of the additional spot money. In fact, the independents actually registered a $1,760,000 decline in spot revenue between 1972 and 1973. Thus, network owned and operated stations were able to manipulate and package their access time to produce a gross increase in spot revenue of $6,771,000. And while we are not adverse to anyone making money, in this particular instance the dollars diverted are going to the very entities whose dominance the rule was intended to curb.

10. There can be no doubt that the Access Rule has been the cause of the competitive disadvantage which has been suffered by the independents. The access time inventory represents millions of additional potential spot dollars for the affiliated stations. This potential revenue can be realized only at the expense of the independent stations.

11. It is impossible to reconcile this result with the rule's intended objective of reducing network dominance of the television industry. The simple fact is that the rule has enhanced the position of the networks and their affiliates vis-a-vis the independent stations. This rule, which was supposed to reduce the dominance of the networks,

4/ This figure and those that follow are derived from Arthur Young and Company "Television Time Sales Reports". These reports are compiled from confidential and unaudited figures submitted by each station in the market. Arthur Young and Company has consented to the use of these figures in connection with these Comments.

is now supported by at least two of the three national network organizations. It is hard to imagine any greater testimony to the failure of the rule.

III
CONCLUSION

12. Metromedia has reversed its position on this issue with only the greatest reluctance. It has shared the Commission's high hopes for the Access Rule. Quite frankly, Metromedia had hoped to play a significant and prosperous role in the process of creating a more competitive television industry. To that end it has invested sums which, from hindsight, were beyond what prudent business judgment probably would or should have dictated. Unfortunately, and for a variety of reasons, the rule has not produced the healthy resurgence of syndication business which had been hoped for. The nightly access half-hour has not provided the foundation from which a healthy challenge to network dominance could grow. Moreover, as shown here, the rule has actually enhanced the position of the networks undermining the economic base of independent television. As a result, there is no justification for continuation of the Access Rule. It has failed and it should be repealed.

Respectfully submitted,
METROMEDIA, INC.

Thomas J. Dougherty

Thomas J. Dougherty

Preston R. Padden

Preston R. Padden

Its Attorneys

5151 Wisconsin Ave., N. W.
Washington, D. C.
September 20, 1974

ATTACHMENT I

DAY	TIME	PROGRAMMING	DMA RTG.	HOMES	WOMEN	WOMEN 18-49	MEN	MEN 18-49
I.		PRIME/ACCESS ORBITS						
M/W/F/Sa	9-11PM	NETWORK MOVIE	20	708	596	451	538	398
Tu/Fr	7:30-8PM	HOLLYWOOD SQUARES	20	706	599	294	430	229
Tu/Su	8:30-10/10:30	MYSTERY MOVIE	23	821	725	547	642	468
Thu	7:30-8PM	PRICE IS RIGHT	21	762	617	312	476	243
		WKLY DELIVERY:	21	749	634	401	522	335
		WKLY COST: $2,694						
II.								
Tu	7:30-8PM	HOLLYWOOD SQUARES	17	615	529	262	374	207
Thu	7:30-8PM	PRICE IS RIGHT	21	762	617	312	476	243
Fri	7:30-8PM	HOLLYWOOD SQUARES	22	797	668	325	486	251
Sun	7-7:30PM	WILD KINGDOM	18	681	517	269	488	275
		WKLY DELIVERY:	20	714	583	292	456	244
		WKLY COST: $1,968						

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KNBC4 LOS ANGELES

...changes – On purchased schedules, Station may at its discretion for any reason change and/or pre-empt any announcements and offer suitable replacements in lieu thereof.
...dience and related data are based on estimates provided by the rating services indicated, and are subject to the qualifications issued by these services. Copies of such qualifications ... on request ...

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DAY	TIME	PROGRAMMING	DMA RTG.	HOMES	WOMEN	WOMEN 18-49	MEN	MEN 18-49
III								
WED	9-11Pm	NETWORK MOVIE	21	748	683	536	509	375
MON	9-11PM	NETWORK MOVIE	21	751	608	435	590	409
SAT	8-9PM	EMERGENCY	17	592	487	344	382	246
TUE	10-11PM	POLICE STORY	19	659	551	412	554	413
		WKLY DELIVERY:	20	688	582	432	509	361
		WKLY COST: $3,108						
IV								
KNBC								
PRIME/ACCESS R.O.S. M-SU 7:30-11PM			18	649	534	357	456	305
		WKLY COST: ~~$1,700~~ 1,000						

Note: ✓Hollywood Squares (twice)
Name That Tune
Animal World (Sat)
✓Price Is Right
Wild Kingdom

KNBC4
LOS ANGELES

ATTACHMENT II

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DAY	TIME	PROGRAMMING	DMA RATING	HOMES	ADULTS 18-49	TOTAL ADULTS	COST
M-F (a)	4:29-5:59P	IN: THE MIKE DOUGLAS SHOW	7	96	19 204	102	$100.-
M-F (a)	5:59-7:28P	IN: NEWS 4 - WASHINGTON	8 2X	104	66 303	134	$200.-
PRIME ORBIT (1 ANNCT /WK)							
FR	7:28-7:59P	HOLLYWOOD SQUARES	12	156	132	217	
SA	8:59P-CL	NBC SNATM	13	163	155	230	
SU	6:59-7:30P	WILD KINGDOM	17	223	182	298	
TH	8:59-10:00P	IRONSIDE	20	260	363	2[illegible]3	
		ORBIT AVERAGE	16	201	208	250	$750

926

Ect #3924

3 6!

18

20

16

$300 -

SOURCE: MAY '74 NSI

FLIGHT DATES: w/o 7/8, 7/15, 8/5, 8/12

Sun 7/7 - 11pm, +60', [illegible] M-Fri 11-11:30 p

WRCTV WASHINGTON, D.C.

Packages – On purchased schedules, Station may at its discretion for any reason change and/or pre empt any announcements and offer suitable replacements in lieu thereof.
Audience and related data are based on estimates provided by the rating services indicated, and are subject to the qualifications issued by these services. Copies of such qualifications available on request. Any projection of future performance represents NBC's evaluation based upon available infor

Comments of Sandy Frank Program Sales, Inc., September 20, 1974, Exhibit F

EXHIBIT F

FALL 1973 PRIME ACCESS PROGRAMMING
TOP 50 MARKET NETWORK AFFILIATES
MONDAY THRU FRIDAY
SUMMARY

(E/P 7:30-8 / 6:30-7 (C/M)

CATEGORY/PROGRAM	# Weekly ½ Hours
Network 1	12
Strip	
Beat The Clock	19
Bowling For $	9
Hollywood Squares II (N)	32
Merv Griffin	5
Movies	15
Tell-Truth	94
Truth or Cons.	40
What's-Line	30
	244
News	
Network News	-
Local News	55
	55
Weekly	
Loc. Prod Pgms. 2	
Local Sports	10
Local Public Affairs	17
All Other Local	13
	40
Games	
Bowling For $	3
Concentration (N)	8
Dating Game (N)	15
Hollywd Sqs I	41
Let's-Deal	34
On The Money	2
Price Is Right	43
Sale of Century (N)	12
Treasure Hunt (N)	19
	177
Drama	
Orson Welles	6
Police Surgeon	18
	24

CATEGORY/PROGRAM	# Weekly ½ Hc
Comedy	
Doctor In House	4
Dusty's Trail (N)	31
Mouse Factory	1
Ozzie's Girls (N)	23
Wait Till Father	16
	75
Animal	
Animal World	9
Inner Space (N)	1
Survival	4
Safari To Adven.	1
Untamed World	5
Wild Kingdom	11
Wild Wrld Anmls (N)	10
Wildlife Theatre	2
	43
Music/Variety	
Bobby Goldsboro	11
Good Ole Nash Mus	1
Jonathan Winters	4
Stand Up-Cheer	4
	20
Misc ½ Hr. Pgms.	
Circus	5
Elephant Boy (N)	2
Kreskin	3
O. People/Places (N)	3
Thrill Seekers	6
You Asked For It	6
	25
Hours/Longer	
Hee Haw	4
Lawrence Welk	2
National Geo.	6
Starlost (N)	4
World At War (N)	3
Movies	5
	24
All Other Pgms. 3	11
Tot. All Periods	750

(N) New Programs
1 Includes Monday NFL
2 Excludes Bowling For $
3 Includes all programs cleared for 2 half hours or less.

OFFICE OF TELECOMMUNICATIONS POLICY
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C. 20504

September 20, 1974

RECEIVED GENERAL COUNSEL
SEP 23 1974
F. C. C.
OFFICE OF THE SECRETARY

SEP 23 12 40

Vincent J. Mullins, Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D. C. 20554

Re: Consideration of the Operation of, and Possible Changes in, the Prime Time Access Rule, Section 73.658(k) of the Commission's Rules (Docket No. 19622)

Dear Mr. Mullins:

Following the decision of the United States Court of Appeals for the Second Circuit reversing in part the Commission's Report and Order of February 6, 1974, in Docket No. 19622, the Commission invited further comments on the Prime Time Access Rule, both as recently modified and as originally adopted. In its Further Notice Inviting Comments, the Commission stated that as a result of this inquiry its decision modifying the rule could "remain essentially unchanged, the original rule could be retained, some solution between these alternatives could be reached, further modifications could be made resulting in less 'cleared' time, or conceivably the rule could be repealed." 1/ The Office of Telecommunications Policy (OTP), for the reasons set forth below, respectfully urges the Commission to follow the last-quoted course.

The original Prime Time Access Rule, adopted by the Commission in 1970, prohibited stations in the top fifty markets from (1) carrying network programs in more than three of the four evening prime time hours, and (2) broadcasting off-network programs or recently televised feature films during the one hour of prime time from which network programs were excluded. In our view, the original rule has proven unsatisfactory for two reasons: (1) its effect has been precisely the opposite of that which was intended, and

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1/ Further Notice Inviting Comments, Docket No. 19622, 39 Fed. Reg. 26918, 26919, July 24, 1974, footnote omitted.

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(2) numerous requests for waiver of the rule have drawn the Commission into the judgment of program content.

The Commission stated that the rule was designed to limit network domination of prime time television by encouraging independent sources of program production and to create more program diversity in prime time than was being provided by the networks. However, by constricting artificially the amount of network prime time, the rule appears to have strengthened the networks' position and weakened the U.S. program production industry, contrary to its original objectives.

With regard to this latter point, the Commission's attention is directed to the OTP study of the U.S. program production industry conducted in 1972-73, which we incorporate herein by reference (Office of Telecommunications Policy, Executive Office of the President, Analysis of the Causes and Effects of Increases in Same-Year Rerun Programming and Related Issues in Prime-Time Network Television). This study concluded, inter alia, that the Prime Time Access Rule was a major cause of the decline of the television program production industry. On the basis of data accumulated in the course of the study, OTP recommended, in a letter to Chairman Burch dated March 21, 1973, that the rule be rescinded:

> "The data that we have collected indicate that the effects of prime-time rule, like the effects of reruns, limit the amount of diverse, original, and high-quality programming available in prime time to the American public. Its effects also weaken the program production industry, contrary to the rule's basic objectives. The rule was intended to stimulate new programming markets, encourage independent sources of program production, and create more program diversity in prime-time TV than the networks were providing. There are enough anticompetitive forces at work in TV without the Government adding more. Therefore, we also recommend that the prime-time rule be changed to allow the networks to program on a regular basis in the 7:30 - 8:00 p.m. time period beginning this fall."

Our second objection to the original rule is that the widespread requests for waiver that it has generated require the Commission to engage in programming judgments that are properly the province of broadcast licensees. This is not only a questionable allocation of the Commission's time and

resources, but, more important, it is an intrusion upon the First Amendment prerogatives of broadcasters and viewers. For the FCC to decide on a program-by-program basis whether the public interest served by the rule itself would be outweighed by permitting the prime-time broadcast of Wild Kingdom, Lassie, National Geographic, or whatever, approaches the brink of the Government determining what people will watch and when they will watch it. Furthermore, this pattern of rulings could lead to government-determined program schedules. In fact, this appears to be the direction of the recent modifications of the rule.

In its Report and Order of February 6, 1974, the Commission modified the Prime Time Access Rule in several respects. It designated six half-hour periods per week as access time (7:30 to 8:00 p.m., Monday through Saturday) and, subject to certain exceptions, prohibited the broadcast of network programs, reruns and feature films during those periods. Several exceptions were carved out of the prohibitions against network programs or reruns during access time. Network or off-network programming could be carried in one of the six access hours each week if it consisted of (a) "children's specials," (b) "documentaries," or (c) "public affairs programming." Moreover, the Commission defined "network programming" in such a fashion as to exclude "runovers" of sports events, certain specific sporting events, and special "all evening" network programming. Finally, the Commission stated that:

> "Although not stated in the rule, it is expected that some of the five or six half-hours thus 'cleared' of network, off-network and feature film material will be used by stations for programs relating to minority affairs, children's programs, or other programs directed to the needs and problems of the station's community and coverage area...." 2/

With this catalog of exceptions, the Commission seems to have encouraged certain types of programming and has cast the case-by-case evaluation of program content of the previous waiver procedures into the rigid mold of a rule. Both the case-by-case method and the rulemaking method raise constitutional concerns.

2/ 44 F.C.C. 2d 1081, 1082 (1974).

As OTP stated in its March, 1973 letter to former Chairman Burch, the Prime Time Access Rule has had a sufficient test and has been found wanting. It is time to repeal it in its entirety.

Respectfully submitted,

Henry Goldberg

Henry Goldberg

2 NETS WEIGH 'DEFICIT' RELIEF

CBS, NBC Seek To Mollify Complaining Producers; MPC Closes Out Telepic Prod'n

By DAVE KAUFMAN

With Hollywood's tv suppliers increasingly unhappy over deficit financing, whereby networks pay less than they allocate for production, attempts now are being made at the highest web levels to work out a compromise to mollify producers, beset with inflation and kindred financial problems. At least two networks—CBS-TV and NBC-TV—currently are in negotiations with suppliers, seeking to work out a compromise on the issue, it was confirmed yesterday by sources with those webs.

Stolnitz-Engel Teaming

This came at the same time it was learned Metromedia Producers Corp. is pulling out of production altogether, after having previously declared a moratorium on development. MPC production v.p. Art Stolnitz and Peter Engel, v.p. of tv programs, are leaving as MPC has notified them it is exiting production, Engel confirmed. It's known that Stolnitz and Engel plan to function as a team, and are currently in negotiations with MGM-TV, among others.

An MPC spokesman said aside from the Cousteau spex previously committed with ABC-TV, no production is planned "until the present climate changes."

WB Mulling, Too

MPC, while not a major supplier for the networks, is not alone in its jaundiced view of network deficit financing. It is known, for example, that Warner Bros. is taking a "very hard look" at its tv operation, going through the process of deciding just what company's tv future shall be.

Rarely have suppliers been as unanimous as they are today anent the deficit financing situation. All are complaining vociferously about it, and shy about making new deals wherein they will lose more coin, as they see it. This holds true both of the major studios and the indies.

Webs Reacting

All this was acknowledged yesterday by a top CBS-TV source who commented, "There is a lot of grumbling all over town. I hear the studio people just feel they are not getting enough money, particularly in view of inflation and labor raises.

"The networks are not unknowing of this. It's a question of compromise, and this is going on now in talks (between network and suppliers). The best thing you could compare it to is an attempt to avert a strike. Network's management is trying to make an offer, and the studios are countering with their offers. Nobody gets everything they want, and we are trying to work something out, but haven't yet."

The spokesman expressed confidence that a compromise will

2 Nets Weigh 'Deficit' Relief

(Continued from Page 1, Column 5)

eventually be worked out, and the crisis allayed.

As for NBC-TV, a top network source commented, "Our business affairs people are in constant contact with the studios on this problem. They are aware of the suppliers' problems, and are in negotiations on it. Hopefully, we will reach a compromise agreement. I think there will be some adjustments in license fees."

Some Delays

Situation affects future production in particular, with development of new projects for next season held up to a considerable extent because some suppliers are gun-shy about going into new ventures without some form of assurance that they won't be burned financially.

Producers and other studio exex contend they see no point in entering into developmental projects if the financial terms are such they take a bath no matter whether a series eventuates and succeeds or not. There have been rumors of discontent in the past, but never to the widespread level now around the industry.

HOGAN & HARTSON

815 CONNECTICUT AVENUE
WASHINGTON, D. C. 20006

TELEPHONE (202) 290-5500
CABLE ADDRESS "HOGANDER WASHINGTON"
TELEX 89-2757

November 11, 1974

Chairman Richard E. Wiley
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

Dear Chairman Wiley:

Chris Craft Industries is a major independent television broadcaster. Through wholly-owned subsidiaries, Chris Craft owns two leading independent television stations: KCOP-TV in Los Angeles, and KPTV in Portland, Oregon. Because of its prominent position in the television broadcast field, Chris Craft feels impelled to state formally its position in response to the Commission's Further Notice in Docket No. 19622. Chris Craft believes that the public interest will be served by a repeal of the Prime Time Access Rule.

When the Prime Time Access Rule was first promulgated by the Commission, Chris Craft joined other licensees of independent television stations in the sincere hope that the Rule would accomplish its objectives as stated by the Commission--to decrease network dominance of the airwaves and to improve the market position of independent stations. See 18 P & F Radio Reg. 2d 1825 (1970). The experience of Chris Craft, however, is that the Rule has had the opposite effect.

Chris Craft aligns itself with the Reply Comments in these proceedings filed by Warner Bros., Inc., United Artists Corp., MGM Television, and with the Further Comments of Metromedia, Inc. Metromedia notes that from 1972 to 1973 in Los Angeles, the nation's second largest television market, the three network-owned-and-operated stations absorbed the entire increase in spot television advertising revenue. Indeed, Metromedia points out that the spot advertising revenue of the independent stations declined during this period. The validity of Metromedia's analysis is underscored by the experience of KCOP-TV in Los Angeles. KCOP has shown significant reductions in revenues in the past two years.

As noted by Metromedia and Warner Bros. in their Comments, the declining position of independent stations in the major markets results directly from the Prime Time Access Rule. The adverse impact of the Prime Time Access Rule upon independent television has been noted by economists and market analysts. See Coleman and Company, Broadcasting Industry: 1974 Midyear Review & Outlook (July 1974), a copy of which has previously been filed in Docket No. 19622. The Rule has increased the number of local advertising positions for affiliates. By "packaging" access time inventory with local commercial availabilities in the sought-after network prime time hours, the network affiliates have been able to increase their share of local spot advertising business at the expense of the independent stations. The experience of Chris Craft in Los Angeles and Portland has again reflected the accuracy of Metromedia's observations. Through sophisticated packaging techniques, the affiliates have been able to turn the purpose of the Prime Time Access Rule on its head, to the detriment of the independent stations. In Los Angeles, for example, the Prime Time Access Rule has decreased significantly the independents' share of total advertising dollars spent for television. A nationally respected accounting firm has documented this phenomenon with figures made available to KCOP:

<u>Percent of Total Television Advertising Dollars Spent in Los Angeles</u>

	1969	1970	1971	1972	1973	1974 (first 6 months)
Network Affiliates	59	62	62	62	65	67
Independents	41	38	38	38	35	33

Chris Craft believes that its experiences are typical of those of other independents, and should be considered by the Commission. These experiences support the Comments of Metromedia and Warner Bros. and amplify their call for the repeal of the Prime Time Access Rule.

Respectfully submitted,

HOGAN & HARTSON

by Howard F. Roycroft
Howard F. Roycroft

Attorney for Chris Craft Industries, Inc.

cc: Commissioner Robert E. Lee
Commissioner Charlotte T. Reid
Commissioner James H. Quello
Commissioner Benjamin F. Hooks

JULY 1974

BROADCASTING INDUSTRY: 1974 MIDYEAR REVIEW & OUTLOOK

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Oxleman and Company

Highlights

1974 Results better than forecast: The better than expected results for consumption expenditures and corporate profits are leading to a better advertising year than had been expected, and until inflation cuts profits, prospects remain good. Advertising and broadcasting growth are projected at 6.6% and 8.1%, respectively, in 1974.

Networks are doing better than stations this year: Since network commitments were made in advance, the effect of price control and energy crisis problems was heavier on the station side. The recent reversal of proposed prime access rule changes, by reducing fall network inventory, has tightened prices and improved the outlook for the 1974-1975 selling season.

Stations would show bigger gains in a good 1975 economy: The relative performance of the two television sectors should change if the economy recovers, as energy-crisis effects wear off, new product introductions increase, and network demand and prices causes a spillover to the stations. If the economy is weak, however, our forecasts for stations are more vulnerable than for networks. Under our current economic outlook, industry growth of 8.6% is projected for 1975--7.2% for the networks and 9.3% for the stations.

Expense increases may rise, especially for the networks: Recent union settlements and movie and sports package agreements suggest increased pressure on network costs. Conversely, some of the recent cost gains at the stations may be abating. The expense outlook and uncertain economy suggests that network market share will be more important than usual. Right now CBS is showing the best gains, with ABC holding, and NBC falling behind.

Regulatory scene quiets down: While several issues exist, like children's programing, cross-ownership, etc., most are close to resolution and the recent recomposition of the F.C.C. suggests a period of relative calm may be ahead on the regulatory front.

The group is attractive if you like the market: Shares are historically low, as are most groups. The broadcasters, however, should, in our opinion, sell at a modest premium because of profit growth prospects, but they are currently at a modest discount. The group's relative performance has been good this year, but uneven, because of liquidity factors primarily. We are recommending purchase of shares of Cox Broadcasting which seems most out of line and continue to suggest purchase of ABC, CBS and Capital Cities. We would hold Taft, which also seems out of line, and feel speculators could retain Metromedia if they are optimistic on the market.

Coleman and Company

SUMMARY AND CONCLUSION

Advertising revenue growth has been much better than expected so far this year, and that's likely to be true for the balance of 1974. Whereas we initially felt advertising would grow about 3% this year, and the television sector 5%, we now estimate those gains at 6.6% and 8.1%, respectively. The explanation for this performance appears to be the fact that contrary to the expectations of most economists at the beginning of the year, corporate profits are going to be up, not down, and consumption expenditures and GNP are rising much faster than had been expected. Both of these phenomena are, of course, largely based on the unexpectedly high inflation rate, and to some extent, the milder than expected impact of the energy crisis. Nevertheless, advertising budgets are generally made in relation to sales expectations, and adjusted by profit results, and until the inflation rate cuts substantially into profit margins it is unlikely to be a significant deterrent to advertising plans. Because advertising rates have not risen to the extent of general price levels, however, the ratio of advertising to sales will fall back this year.

One difference from past relationships that is appearing this year is that television's growth is not exceeding that of total advertising to the extent that it normally does. This appears to reflect the more substantial rate increases being posted by the print media, which have been faced with much greater cost pressures than have the broadcasters. We do not believe there is any alteration in the underlying demand growth between the various media.

Within the television sector, the networks are getting a better share of the national advertising dollar than the stations in 1974 due somewhat to structural changes that have occurred and due to some timing factors which we will explore later. Local television advertising continues to grow faster than national, and faster than local advertising in other media.

There had been a broad consensus at year-end 1973 that 1974 was going to be a soft year for the economy, but that gains beginning later this year would carry through to make 1975 a year of substantial growth. Now, not only has the concensus about 1975 broken down, but there are increasing fears that the two year performance may actually end up in reverse of earlier expectations, with a slower 1975 than 1974 because of runaway inflation and the effect on profits of Government policies to deal with the situation.

In order to come up with a 1975 forecast for advertising and broadcasting we have used the June forecast of Chase Econometrics which, in the important variables for the media, projects moderately good results, with some acceleration of consumption expenditure growth, but some slowdown in profit gains and a modest decline in profit margins. On balance, historic relationships would suggest that these forecasts would lead to a similar growth in advertising next year to that projected for 1974. Since, in our opinion, advertising is based on the trend of consumption expenditures, adjusted for trends in profit margins, on a lagged basis, those with more bearish 1975 economic

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scenarios, particularly for profits, should obviously expect less growth in advertising than we are projecting.

On the cost side, pressures have not been as great as in the overall economy, but they appear to be rising. This is only partially an inflation-related problem. To an equal extent it is and has been a supply/demand situation. We believe that the prime time access rule has been an important factor, for instance, which has generally favored the television networks at the expense of the television stations. Nevertheless, expense increases are likely to begin to rise for the networks as well next year, and we believe that the industry's 1975 expense outlook is for somewhat greater cost increases than has been the case over the last two years.

On the regulatory front, things have been relatively quiet recently, mainly because there has been no one around to regulate. Nonetheless, the resolution of several issues are probably imminent, among them the children's programing controversy and the media cross-ownership hearings. While the Justice Department continues to pursue its antitrust suit against the television networks, the F.C.C. appears to have backed away for the time being from the subject of concentration of network power and an era of what might be called "malignant neglect" seems to be ensuing. This will probably take the form of increasing liberalization of the rules for the cable television industry.

Despite some of these uncertainties, the outlook is basically healthy and 1974 and 1975 should be relatively good years if the economy holds up. Longer term, broadcasting should grow in line with or faster than the economy. Profit margins and cash flow are high, leading to the likelihood of better than average, though cyclical, profit growth. Shares of the major broadcasters are historically low and normally provide above-average leverage in market turns. The group's relative market performance has been good over the past few months, probably because the broadcasters turned down earlier than the market, and because the industry is not particularly affected by some of the more pressing problems of the economy, especially the need for money.

We have been recommending purchase of shares of CBS, Capital Cities Communications, ABC, and, more recently, Cox Broadcasting. We continue these recommendations, and would also suggest retention of shares of Taft Broadcasting, which along with Cox should participate in any broadening of the recent interest in the group to the more thinly-traded issues. While Metromedia is the only one of these six issues we expect to have lower earnings this year, it is highly leveraged, and could be held for speculative recovery by those who are generally positive on the outlook for the market over the next year.

<u>Interim Results of the Advertising and Broadcasting Industries</u>

In the accompanying table one can see that television billings by national advertisers gained nearly 5% for the first four months, with good gains on the network side and a flat performance for national spot. This was probably not much better than overall national advertising growth, because of the aforementioned price increases in the print media. Local television advertising's first quarter growth of 6.8% compares to about 5.8% for newspapers. Since the latter represents nearly 60%

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I. INTERIM RESULTS OF THE MEDIA

1974 vs. 1973 - Estimated Percent Change in Television Billings[A]

Month	Network	National Spot	Total National	Local	Total Industry
Jan.	+ 6.1%	- 0.8%	+ 3.8%	+ 8.8%	+ 4.7%
Feb.	+ 5.4	- 4.0	+ 1.7	+ 3.5	+ 2.1
Mar.	+ 6.3	+ 4.6	+ 5.6	+ 7.9	+ 6.1
April	+13.2	+ 1.0	+ 7.6		
May	+17.3				
Year-To-Date					
1st Quarter	+ 6.0%	+ 0.2%	+ 3.8%	+ 6.8%	+ 4.2%
4 months	+ 7.8	+ 0.4	+ 4.9		
5 months	+ 9.4				

National Advertising - 1974 vs. 1973

Medium	Time Period	Percent Change in Revenues
Television	4 months	+ 4.9%
Newspapers[B]	1st quarter	+ 6.1
Magazines[C]	4 months	+ 4.3

A *Sources: Broadcast Advertising Reports for Network, "Television/Radio Age" for spot and local. Weighting by us.*
B *Newspaper Advertising Bureau*
C *Magazine Publishers Association*

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of all local advertising, it appears that television's local growth is surpassing that of the industry.

A shift in national advertising money to the networks from the stations began in the third quarter of 1973, and appears to reflect timing to some degree. As a result of Phase 4, there were some substantial cutbacks of advertising by companies faced with the combination of price restrictions, rising costs and raw material product shortages, particularly in the food industry which was under special controls. This caused a pullback in advertising, primarily on the station side, because most network commitments had already been made in advance. The food industry is national spot's biggest customer, providing nearly 20% of billings. One of the reasons that the food industry is so important to stations is that it is one of the biggest generators of new product introduction which are tested in selected local markets before they are introduced nationally. The price control and product shortage situations substantially curtailed the introduction of new products.

Then came the energy crisis. Some advertising cutbacks were made in the automobile and airline industries in addition to gasoline advertising, which had already been cut before the October War. These cuts were heaviest in the first quarter of 1974. While there were some advertiser cancellations on the networks, the brunt of the effects on advertising of the energy crisis and price controls was borne at the station level. Some of these same factors also caused a slowdown in the growth of such local television advertising categories as supermarkets, automobile dealers, and utilities, although the overall growth rate remained high.

Results at stations appear to be picking up now, however, as some of these problems pass. Comparisons are likely to get better in the second half if the current level of activity holds up, because of what happened last year. There should also be increased political money this year due to off-year elections, and perhaps, a substantial pickup in automotive advertising, due to the changes in that marketplace and a turnaround in sales trends. The elimination of price controls may help in some special areas of high demand, but this is not expected to be as big a factor on the advertising rate side as it will be on the advertiser demand side, particularly in the food industry.

As the table indicates, second quarter gains at the television networks are very substantial. Demand is normally seasonally strong in this period, and the general recovery in advertising from first quarter levels with a tight network supply situation led to big price increases. Some spillover into daytime network television has apparently occurred, and gains in that daypart are now exceeding prime time growth. This is auspicious with respect to national spot television as well.

Prime Access Rule Revision Changes the Outlook

What looked like a moderately good 1974-1975 selling season for the television networks is turning into what may be a small boom, thanks to the recent court decision barring the Federal Communications Commission from going ahead with its proposed alteration of the prime time access rule. The rule, which beginning with the

1971-1972 season essentially forbade the networks from more than three hours per night of (non-news) programing between 7:00 P.M. and 11:00 P.M. (New York time), was to be changed so that the networks would have no restrictions at all on Sundays or from 7:00-7:30 any night. Also they could program one 7:30-8:00 P.M. half hour a week devoted to children's programs, documentaries or public affairs shows. All three networks were planning to program from 7:00-11:00 on Sundays, and do occasional or regular programming on Saturday from 7:00 to 8:00. A U. S. Court of Appeals ruled that the F.C.C. did not give producers enough lead time and that the rule could not take effect until September, 1975, at the earliest. It also implied that even if the proposed revisions were to stand for the 1975-1976 season, the F.C.C. should conduct additional hearings into the matter. If this were to be done, and a reasonable lead time given, it would probably be the 1976-1977 season before any change in the rule could now occur.

The networks have each dropped an hour of regularly scheduled programing from their original lineups and now intend to do only an occasional amount of Saturday night children's and documentary programing. As a result of this, about 5% of the fall prime time inventory was eliminated, and it is likely that this will tip the supply/demand balance to a seller's market. Consequently the 1974-1975 outlook for the networks has improved considerably.

The rule also helps the networks on the profit side, in our opinion. The cancelled programing was new, and networks generally don't make money on new shows initially. This is particularly true of ABC, which has a deficiency of affiliates. Clearances are normally lowest on new shows.

By the same token the impact will probably be neutral to somewhat negative for stations, mainly on the cost side. The fact that affiliates all over the country now have to scramble at the same time for programing to fill time periods that they expected the networks to use, has reportedly caused substantial price increases in syndicating programing for the access period. Also the amended rule would have allowed stations to program the 7:00-7:30 P.M. time period with off-network reruns, which many intended to do Monday-Friday, and now they cannot. This means some will have to hold off showing some programing they purchased and buy other product. There is also the question of increased inventory, although, many stations make good profits in the weekend access period.

Turning back to the network sales outlook, an interesting aspect of what's going on is the sudden boom in network daytime demand. There are several possible explanations for this, among them spillovers of prime time demand, a return of the food advertisers, comparisons with periods last year when the Watergate hearings were telecast, and a widening disparity in costs per thousand homes reached vis-a-vis prime time. The latter point is important because, if true, it may indicate that demand will spread throughout the whole industry. It also brings into consideration the question of what has happened recently to the relationship of network and spot advertising.

<u>Has the Network/Spot Structure Changed?</u>

Since 1971 the networks have generally done better than most expected. Some of the reasons are; (1) the prime time access rule, (2) the turnaround to profitability of ABC, (3) the diminishing alternatives to the mass marketer due to the demise of

competing media and (4) the growth of new advertising categories, due to the sales effectiveness of the medium. Turning to the first two points, there are normally a significant number of upfront buyers of established network programs when fall schedules are announced. When 14% of the available prime time was eliminated, the networks found themselves with a much higher percentage of their inventory already sought after, and conversely far fewer marginal programs to sell. This tightened the overall price structure, and was a major factor in the turnaround at the ABC-Television network which not only benefited from firmer rates, but from the elimination of substantial direct losses in the marginal programing that was no longer called for. With its improved performance, that network did not have to cut rates to sell less desirable product to the extent it had previously and this further helped the rate structure of all three networks.

We believe that as long as the prime access rule stays as it is, this improvement in network stability will continue. At the same time, we do not believe that it will mean permanently better growth for network television vis-a-vis the national spot market. In most cases, one is looking at the same national advertiser, and if costs per thousand relationships get out of line, we think the relative growth patterns will change to balance out rate differences as has normally been true in the past.

As a matter of fact, the relative growth between network and spot hasn't really been that much different over the last five years, as noted below:

PERCENT DISTRIBUTION OF NATIONAL TELEVISION ADVERTISING

Year	Network	National Spot
1973E	57.7%	42.3%
1972	57.8	42.2
1971	58.2	41.8
1970	57.3	42.7

Source: *Federal Communications Commission 1970-1972; Coleman and Company estimate 1973.*

The change in 1971 was clearly because of the initial effect of the prime time access rule. This year we are projecting better gains at the networks than in national spot. To some degree this reflects the timing of the energy crisis. As network prime time strength continues, however, it should spill over to the stations as seems to be the case with network daytime because of supply constrictions, and because of rate differentials. When the energy crisis and price control-related advertisers come back, and as new product introductions begin to increase spot should get increasingly stronger. If the economy is reasonably good next year, we would expect both network and spot to show gains, but a somewhat bigger increase in national spot, as was the case in 1972-1973.

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In the two adjoining tables, we have recapped historic F.C.C. data on the industry and our estimates for 1974 and 1975. We have also shown similar estimates for total advertising, and the relationship between television and advertising. The Chase Econometrics forecast on which the 1975 projections are based projects growth of key variables as follows: GNP, up 11.6%, Consumption Expenditures, up 11.1%, Corporate profits before tax up 8.1%, the GNP deflator at 8.9%, and real growth of 2.4%.

Outlook for Stations

In assessing the outlook for television stations, two factors should be added to the previous comments and statistics. First, affiliated stations receive compensation from their respective networks for carrying the latter's programing, in addition to income from national and local advertisers. This income has been declining in recent years; however, it is expected to rise 4-5% this year. The networks received a reduction from American Telephone and Telegraph for transmitting programing, last June, and they passed back some of those savings to their affiliates in the form of increased compensation, because they had lowered compensation when AT&T transmission costs rose a few years ago.

Factoring in the increase in network compensation, the revenues of an average station should rise 6.8% on the basis of our projections for spot and local television this year. With a smaller increase in compensation in 1975, we project average station revenue to grow 9.3%.

Which brings us to another issue, the word "average". Because national advertisers using the television station markets as well as networks concentrate their purchases in the largest markets, stations in those markets derive a greater percentage of revenues from national spot vis-a-vis local advertising than is the case in the smaller markets. (In 1972, the latest year for which F.C.C. data is available 62% of all national spot advertising was in the top 20 markets. These markets contained 33% of the population.) Since most of the big publicly-held broadcasters are in big markets, their growth has been and will probably continue to be somewhat less than the "average" station. The big markets are also the most competitive both on the rate side, and in terms of bidding for syndicated programing. In markets with independent stations and network owned and operated stations, growth has been somewhat less strong and more volatile because of intense competition. For instance, in the top five television markets (New York, Los Angeles, Chicago, Philadelphia and Detroit), annual growth over the 1967-1972 five year period averaged 5.9% compared to 8.6% for all other markets, and national spot billings gains compounded at a 3.8% rate compared to over 6% for the rest of the industry. Another measure of the slower performance of big markets is the "Television/Radio Age" barometer of stations by billing size. Weighing their results for the first quarter of 1974 shows that national spot and local were off 0.6% and up 4.7%, respectively, for stations with annual billings of over $3 million, compared to industry results of up 1% for national spot and up 8% for local.

Just as the prime time access rule helped the networks by reducing supply at a time of weak demand, it hurt the stations by adding inventory. Problems were compounded by the conversion over the last several years of the basic selling unit to a

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TELEVISION ADVERTISING
($ Millions)

Year	Network	National Spot	Total National	Local	Total Industry
1975E	$2,160	$1,470	$3,630	$1,100	$4,730
1974E	2,015	1,347	3,362	992	4,354
1973	1,840	1,289	3,129	898	4,027
1972	1,688	1,177	2,865	810	3,675
1971	1,490	1,023	2,513	666	3,179
1970	1,551	1,103	2,654	589	3,243
1969	1,570	1,119	2,689	547	3,236
1968	1,424	1,010	2,434	482	2,916
1967	1,359	883	2,242	393	2,634
1966	1,302	882	2,184	373	2,557
1965	1,142	796	1,938	328	2,266

ANNUAL PERCENT CHANGE IN REVENUES

	Network	National Spot	Total National	Local	Total Industry
1975E	+ 7.2%	+ 9.1%	+ 8.0%	+10.9%	+ 8.6%
1974E	+ 9.5	+ 4.5	+ 7.4	+10.5	+ 8.1
1973E	+ 9.0	+ 9.5	+ 9.2	+10.9	+ 9.6
1972	+13.3	+15.1	+14.0	+21.6	+15.6
1971	- 3.9	- 7.3	- 5.3	+13.1	- 2.0
1970	- 1.2	- 1.4	- 1.3	+ 7.7	+ 0.2
1969	+10.3	+10.8	+10.5	+13.5	+11.0
1968	+ 4.8	+14.4	+ 8.6	+22.6	+10.7
1967	+ 4.4	+ 0.1	+ 2.7	+ 5.4	+ 3.0
1966	+14.0	+10.8	+12.7	+13.7	+12.3
1965	+ 9.3	+10.4	+ 9.7	+ 8.8	+ 9.6

Source: *Federal Communications Commission 1965-1972 Coleman and Company estimates 1973-1975.*

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ADVERTISING TRENDS

	$ Millions			Percent Change		
	Total Advertising	National Advertising	Local Advertising	Total Advertising	National Advertising	Local Advertising
1975E	$28,150	$15,020	$13,130	+ 6.6%	+ 5.0%	+ 8.5%
1974E	26,400	14,300	12,100	+ 6.2	+ 4.8	+ 8.0
1973E	24,850	13,650	11,200	+ 7.4	+ 5.5	+ 9.9
1972	23,130	12,940	10,190	+11.3	+ 8.6	+14.9
1971	20,783	11,913	8,870	+ 6.0	+ 4.0	+ 9.0
1970	19,600	11,460	8,140	+ 0.6	- 0.5	+ 2.2
1969	19,482	11,518	7,964	+ 7.5	+ 5.8	+ 9.9
1968	18,127	10,883	7,244	+ 7.5	+ 6.2	+ 9.5
1967	16,866	10,250	6,616	+ 1.2	+ 0.4	+ 2.5
1966	16,670	10,213	6,457	+ 9.3	+ 8.7	+10.2
1965	15,255	9,398	5,857	+ 7.8	+ 7.5	+ 8.3

Ratio of Television/Advertising

	Total	National	Local
1975E	18.74%	26.38%	10.06%
1974E	18.36	25.61	9.81
1973E	18.04	24.99	9.59
1972	17.70	24.13	9.51
1971*	17.00	23.00	8.97
1970	18.35	25.24	8.65
1969	18.40	25.45	8.21
1968	17.82	24.39	7.97
1967	17.25	23.83	7.04
1966	16.93	23.31	6.85
1965	16.49%	22.65%	6.59%

** Cigarette advertising banned, from broadcast media only.*

Source: McCann-Erickson, Inc., Robert J. Coen, Vice President, 1965-1972, except for 1971 which we have adjusted. Coleman and Company 1973-1975 estimates.
Note: These figures are on a different basis than those previously attributed to the F.C.C., so the ratios are different than we would get by taking F.C.C. numbers for television as a percentage of McCann-Erickson figures for the industry.

30-second commercial from a 60-second one, which further aggravated the demand/supply balance in 1971. In 1972-1973, however, the growth in demand eventually corrected the situation, and many affiliated stations, particularly in big markets are benefiting from the rule vis-a-vis previous income from network compensation.

An exception has been the independent (non-network affiliated) station. While ratings for independents generally rose because independents were allowed to show more popular off-network reruns and affiliates were not, the latter were often able to bury the access period inventory in attractive packages of local news spots, or adjacencies to hit network shows. Independents are still viewed in a somewhat secondary way by many agencies, and they generally get cut back first and restored last when there are cycles in television advertising. The access rule by increasing inventory in attractive time periods, has apparently compounded the volatility of the independents.

The prime time access rule has also had a significant effect on the expense side of broadcasting. At the station level, competition for the relatively few successful shows produced for the access period, and the effect of product needs caused by the increased inventory has led to some big price increases in syndicated programing, which, as we mentioned before, has intensified because of the recent abrupt change in conditions for the 1974-1975 season. Also, there have been fewer long-running hit network shows coming into syndication in recent years, because there are fewer programs on, and the networks have increased non-series programing. Recent trends to do increasing amounts of expensive news programing by stations, and public interest group pressures have also added to cost increases. It appears, however, that some of the latter pressures should be easing.

Outlook for Networks

On the network side the opposite trends are forecast. The reduction in time, caused a supply/demand imbalance in favor of the networks vis-a-vis the program producers. At about that time, Hollywood was in the throes of a major financial upheaval caused by the failure of many big budget films, and the networks were able to buy motion picture product at relatively attractive rates, much of which is still being played off and some of which has not aired yet.

However, expense pressures on the networks are expected to mount over the next couple of years for several reasons. First, the union cost increases over the last year from settlements with the Writer's Guild, the Director's Guild, the American Federation of Television and Radio Artists, the International Alliance of Theatrical Stage Employee, and the recent contract with the Screen Actor's Guild, suggest substantial cost increases for comparable series programing beginning this season. The head of production for Paramount was quoted in an issue of "Variety" last year (July 25, 1973) as saying that union settlements made so far (The Writer's Guild, Director's, and Stage Employees) would mean a $12,500 per half-hour and $20,000 per hour increase in costs. A half-hour show last season cost about $100,000 and an hour show over $200,000, so these increases are fairly substantial. Most series contracts call for the networks to absorb union-mandated cost increases as well as a certain percentage increase in price each year a show is renewed.

The recent Screen Actor's Guild negotiations are likely to be the most costly of the union pacts over the last year and a half, because the union won significant increases in payments for reruns as well as a 25% increase, over the life of the three year contract, in the minimum wage rate.

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At the time of this writing, we cannot precisely measure the impact yet, or are all the terms known, but this is what appears to have been the result. Actors will receive 50% of their compensation for original programing on all reruns in the upcoming season, 70% on programs made this season that are produced after January, 1974 and for the 1975-1976 season, and 100% beginning with the 1976-1977 season. However, the rerun payments have ceilings of $1,000 for a half-hour program, $1,000 for an hour show, and $1,200 for anything longer. Therefore, higher paid talent will not get the 50%, 70%, and 100% compensation for reruns that lower paid people will earn. Additionally, actors under the American Federation of Television and Radio Artists, another union, were brought up to parity with the Screen Actors Guild. Previously AFTRA members had often been paid less than SAG members for the same work.

In a typical half-hour show, actors' salaries and benefits represent about 25% of costs. Total rerun payments by the networks average 15-25% of total original costs, however actors represent a substantially higher percentage of the rerun payment than of the original cost, because the production costs are eliminated so that most of the rerun payment is for talent (including writers, directors, etc., aside from actors).

From an original mix of 39 originals and 13 repeats in prime time television, the number of reruns has escalated to the point where the average series has about 23 originals, 23 repeats and is preempted 6 times by specials, or other programing. According to "Broadcasting" magazine, (October 12, 1972) a survey of 45 series that completed the 1971-1972 season showed that 27 of the series had second repeats. Under the new agreement, full compensation will be paid for all repeats now, not at different rates for the second repeat.

If one takes a typical program, with a 19 rating, revenues per original episode for three commercial minutes would be about $175,000 at a cost per thousand homes of $4.75. Deducting about 30% of gross revenues for agency commission and station compensation, and with a production cost of $100,000, only $22,500 is left to cover overhead, technical costs, and profit. In the rerun period, where average (Spring-Summer) ratings might be 15 (percent of total television homes), and costs per thousand about $4.40, the three minutes brings in about $130,000, but program costs are only about $20,000, so deducting the same 30%, the profit is $70,000 per episode before overhead. Therefore, one can see the importance of this issue to the network expense picture.

As we said, we do not yet have enough information to determine what this settlement means to the average cost of series programing. If it is substantial, it could lead to more original programing, which, in comparison to the revised cost of reruns may not be that much more expensive. This could take the form of either additional episodes of regular series, more original summer series, or a change in the series to total program mix. For cost reasons, we doubt there will be more episodes of the regular series. One beneficial aspect of the settlement is that it may kill potential inquires by the F.C.C. into the rerun issue. Reportedly the Commission was recently considering whether to take up the subject.

The gradual increase in reruns has resulted from rising production costs, but it is obviously unlikely that this avenue can be taken to pass along further increases

any more. While the producers have probably absorbed as much if not more of recent cost increases than the networks, due partly to the change in the supply/demand balance occasioned by the access rule, it is questionable how long this can go on. Most of them make no money on network programing anyway, and deficit finance such product in order to gamble on the lucrative syndication market potential of a hit show when it goes off the air and can be sold to stations. Therefore, the whole picture adds up to escalating cost increases for series programing over the next couple of years.

We mentioned that feature films prices have been relatively constant because the networks are still playing off a lot of product they acquired several years ago. Where prices have risen, they have often been able to average out costs by splitting movies into two nights, showing them more than twice, or letting longer films run over normal movie time periods. Recently, however, the quality of the mix has improved, unit prices on comparable product seem to be going up, the number of cheaper movies of the week is going down, and a few blockbuster films have been purchased at very substantial prices. We, therefore, believe that average unit prices for theatrical films will begin to rise from their relatively flat base over the last few years.

In sports, the price of the new four year contract signed by the three networks and the National Football League was apparently hiked 10-15%, although it varies network by network depending on the number and mix of games to be shown. These costs will be level, however, for the next three seasons which will be a moderating factor on costs.

The remaining expense areas appear to be showing normal increases, except for transmission costs, which are going down this year because of the AT&T settlement referred to earlier. The networks are also benefiting this year from the absence of losses sustained last year in covering the Watergate hearings, although televised impeachment hearings could wipe out this swing. (Because of Watergate, daytime revenues and expenses were artifically deflated last year, so above-average increases on both counts are likely in the June-September period this year.)

In calendar 1974 it appears that expenses of the three networks will be up 7-8% compared to the 6.2% increase registered in 1973. Increases will probably be at a faster rate in the fourth quarter, when some of the union contract provisions take hold, the new sports contract prices begin, and because the Writer's Guild strike-delayed 1973-1974 season resulted in an above-average number of reruns last September which will be replaced by less profitable original programing this season. If our estimates of network revenues and expenses are in the ballpark, the three would show a combined profit rise to about $225-230 million this year from $185 million in 1973, or 20-25%. We would expect CBS to show network revenue gains of 12-13%, ABC 9% and NBC 6-7%. Dollar profit gains are expected to be relatively commensurate with sales gains, although ABC, with the lowest estimated expense increase and the smallest current level of network profit, may show the highest percentage profit increase.

These projected results generally reflect ratings patterns over the past year, in the important time segments, particularly prime time where CBS's lead was the widest in years. In addition, CBS has recently pulled somewhat ahead of the pack in the three-way race for Monday-Friday ratings. Given these two factors, CBS's share of the 1974-1975 season pie should increase, which provides some security to investors vis-a-vis the uncertain economy.

At the same time, ABC has held on to gains achieved over the past few years in most areas and improved in others (sports, late-night, etc.). ABC has been getting

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closer to parity with NBC, and this could be an important turning point for the company, which hopes to pull ahead in the upcoming season. If it did, its hope for major affiliation switches could become a reality, which would go a long way toward correcting that network's built-in disadvantage of fewer and poorer quality affiliates. ABC's strength lies in its attractive demographics (generally the 18-49 year old audience). Initial reports of new season activity indicate that ABC's upfront sales are ahead of NBC's which is a very auspicious sign. CBS's, of course, are the strongest of the three.

If our presumption of somewhat lower revenue growth and somewhat higher expense increases in 1975 is correct, market share trends may make the difference between higher or lower network profits next year and obviously bear close watching. The networks, of course, all own five television stations which are very important to their 1975 prospects, especially to ABC which earns more from its stations than from its network (although they may be more even this year). Under our present assumptions that spot will grow faster, and station expenses may not increase more than they have been the overall broadcast outlook for ABC and CBS is healthy for 1975. If the economy turns out to be sluggish, however, in terms of profits, the effect on our 1975 estimates would likely be greater on our outlook for station business than for networks.

This also leads to the probability that the outlook for the group broadcasters in 1975 may be for better gains from their stations than from the network operations of the network companies, but that that outlook is more volatile, and subject to change. The remaining question marks in the 1975 broadcast outlook revolve around radio operations and the regulatory climate.

__Radio__

Radio industry revenues were up an estimated 3-5% last year because of a good gain in local billings, and despite drops of 5-10% in network and national spot business. While no interim data is available, CBS research estimates first quarter national (network and spot) billings were off 8-9% (at seasonally adjusted annual rates) and in talking to most of the broadcasters, it appears that radio revenues are generally behind on a year-to-date basis, in some cases sharply. The weakness in national radio over the last year and a half can be ascribed to several factors. Most importantly, radio depends far more on oil, automobile, and airline business than does television, and these categories are particularly important to radio's most important selling period, drive time. Thus the relative impact of the energy crisis has been much greater on radio than on television. Secondly, the substantial growth in FM radio audiences has resulted in advertisers spreading their money over more stations, generally at lower rates. For competitive reasons FM prices have historically been lower on a cost per thousand basis than those of AM stations. As FM ratings have increased, the rate differential has narrowed, partially at the expense of AM stations. Radio advertisers had historically concentrated their buys on the top several stations in a market. That is still true, but they are apparently buying more stations than they did, and in many cases, the FM's are among the top 5 stations. The brunt of this trend is being borne by the medium ranking AM stations, particularly those with rock oriented formats, since that's where FM has been most competitive.

Third, there has been some change in the classification of what is called local radio advertising and in what has been called national. As the major advertising agencies set up regional buying offices, their billings have often been called local, even though they are for national products. In many cases "local rates" are less than "national rates" which is one reason the practice has proliferated, and the net result is not just a change in classification but a reduction in billings. Finally, the strength of the television industry has been cited as having absorbed advertising money that had been earmarked for radio. More frequently than in television, major advertisers go in and out of radio entirely from time to time, so results can be very volatile.

In any event, results seem to be recovering at present because of the return of some of the energy crisis related advertisers. Also, to a greater extent than in television, the elimination of price controls should help many radio stations, particularly the FM's. At this point, it is doubtful that the industry will have much, if any gain in billings this year, at least on the AM side, but results should continue to recover.

Radio operations provide a significant portion of profits for all of the major broadcasters, except CBS. The contribution to broadcast profits of the radio divisions of the five other broadcasters cited in this report ranges from about 10% to 30% with ABC at the low end and Metromedia at the top. Current trends in radio would generally favor CBS and Metromedia who have among the largest FM groups in the country, and in CBS's case because AM-FM ratings have been strong. ABC also has an important FM group, which is doing well, but its big AM stations seem to be affected by fractionalization, since most of them are rock-oriented.

The Regulatory Outlook

The broadcasting outlook is never without a myriad of regulatory issues at hand, and the present time is no exception. The difference this time, however, is that they are not particularly serious, and all appear fairly close to resolution. We have highlighted below the most important ones, and attempted to tie our comments into their specific applicability to the six companies we are covering in this report.

Children's advertising: Under pressure from the Congress, the Federal Trade Commission, and consumer groups, the National Association of Broadcasters' TV Code Board has proposed a reduction in commercials during children's program times. The current proposal would reduce non-program time to the current prime time standard, which is 9½ minutes per hour. In addition, non-program time in afternoon programing would be reduced from 16 to 12 minutes. This would primarily affect independent television stations. The amount of non-program time in children's programs was reduced from 16 to 12 minutes at the beginning of 1973. Non-program time includes station breaks for affiliates, station identification, and program credits.

Before last year's reduction, the networks generally had 11 to 12 minutes of commercials per hour. At the time of the January, 1973, reduction in non-program time, they were able to mitigate some of the impact by playing some program credits during the program time. Also, some of the reduction in non-program time was absorbed by the affiliates. The network commercials load per hour went down one or two minutes per hour depending on the network. This time the networks may lose more time than in 1973, depending on the network.

The F.C.C. which held hearings on a petition by Action for Children's TV to eliminate commercials on children's television in early 1973, never came out with rulemaking, but recent statements by the Chairman indicated they were about to. According to trade speculation the F.C.C. wanted prime time commercial limits, as the proposal calls for, but perhaps more stringent policies in afternoon programing than is being suggested. The Chairman of the F.T.C. has also called for elimination of advertising premiums in children's commercials.

Children's programing currently provides about 5% of television network billings; however, it can be very profitable, and probably provides more than 5% of profits. That profit has historically been unevenly distributed with CBS accruing the lion's share of it, ABC's children's schedule has been profitable, while NBC's probably has not. However, ratings over the past season have seen NBC pull up closer to ABC while CBS has dropped back.

When the first commercial reduction occurred, the profit impact was not substantial, basically because the networks were generally not sold out except in the fourth quarter. The earnings loss at CBS was estimated to be less than $1 million, and the impact was probably less, if there was one, on the other two networks. This time it should have a greater effect, although eventually prices could rise as supply diminishes. In the meantime, profits have been falling in children's programing anyway, as increased publicity, pressure, and tighter commercial content regulations by the networks have driven many sponsors out of this daypart. In the first quarter of 1974, Broadcast Advertisers Reports estimates that children's programing revenues dropped 15%.

Cross-Ownership

Since 1968, the Justice Department has been urging the Federal Communications Commission to force divestiture of newspaper-owned television and radio stations in the same market. In March, 1970, the F.C.C. issued a notice of proposed rulemaking which, within five years from enactment, would have required any party's media holdings in one market to be divested down to either a daily newspaper (or papers), a television station, or an AM-FM radio station combination. No decision was ever made on the divesture aspect, although future acquisitions which would create a cross-ownership situation were barred.

About six months ago, the Justice Department began filing petitions to deny renewal of licenses of certain broadcast stations which are owned by newspaper interests where it felt there was undue concentration of control. Recently, a proposed license renewal bill passed the House of Representatives, which if enacted, contains a provision stating that the F.C.C. cannot deny renewal to a broadcast station simply on the basis of cross-ownership, but that the F.C.C., within six months of passage of the renewal bill must settle the cross-ownership question by adopting a rulemaking one way or the other. As a result of these events, the F.C.C. has scheduled hearings beginning July 24, 1974, on the cross-ownership issue. Consideration of the renewals attacked by the Justice Department has been deferred until a general policy is established.

The outcome of the hearings is not an either/or question. In its proposed rulemaking, the F.C.C. is concentrating on newspaper-television combinations, and on smaller markets. The Justice Department agrees that these two areas are the most critical, so that it is possible nothing will be done to cross-ownership situations involving radio stations, and that requirements on newspaper-television situations will depend on the size of the market.

Should the F.C.C. decision be negative, companies affected would presumably be able to trade properties with each other over a five year period. There are presently a substantial number of newspaper-owned television stations in many of the largest markets in the country, so that it might even allow some operators to trade up more easily than would currently be the case. In the case of the six major companies we are considering here, the only party likely to be affected is Cox Broadcasting, which is controlled by a newspaper chain. Cox's potential problems are basically newspaper-television stations combinations in Atlanta and Dayton. There is also a newspaper-radio combination in Miami, and Capital Cities' proposed acquisition of Carter Publications gives it a newspaper-radio station combination in the Dallas-Fort Worth market.

It should also be mentioned that a cross-ownership rule was adopted in the C.A.T.V. industry calling for divestiture to comply with separation rules next year. However, the date and the question of "grandfathering" existing combinations will be reviewed later this year by the F.C.C. This proceeding's effect on the broadcasters is basically limited to Cox in Atlanta. Cox Cable's Atlanta system is marginally profitable.

Network Program Control

In connection with an internal evaluation of the prime access rule last fall, the F.C.C. was considering a broad inquiry into the general subject of network domination of television programing. Some of the areas that were to be considered were network ownership and production of programing, studio interests, reruns, and their interests in their five local television stations. Some of these issues encompass ongoing suits against the networks by the Justice Department and the Hollywood studios. Leakage of the proposed inquiry last December caused a substantial backlash because of the political climate at the time, and apparently the issue of ownership of stations was shelved, although then-F.C.C. Chairman Burch pushed for the

inquiry into studio operations. On that issue, the networks countered that they make little if any profits from their facilities, but that they need them for news operations. As news production is insufficient to cover the overhead of the studios, they claimed the need for outside work in order to break even. Commissioner Burch was apparently unable to get enough votes internally after the networks produced their arguments, and that issue was also shelved. The program ownership aspect is still in the courts. The networks generally own less than 10% of the entertainment programing that they show. If they lost this issue, they could buy such programing from the outside, and we do not believe the impact would be significant.

Because of Chairman Burch's departure, and the substantial turnover at the Commission, this area of inquiry may not come up in the near future, but the subject will quite possibly surface again sometime later at the Commission level. Aside from the television station ownership issue, on which there is, in our opinion, little likelihood of any action, and reruns, which we have discussed, the potential impact of these issues is twofold, as we see it. First, Commission concern about network control has not ended, but the direct attacks of the last few years will probably subside, and take a new direction--the stimulation of competing programing sources, namely cable television. This should be very favorable for the cable industry, but over the foreseeable future should not have an impact on network results. In fact, if there is an impact on results it will more likely be at the station level, in those cases where broadcasters are in cable or to-be cabled markets and currently have very high audience shares.

The second and more important aspect is the whole question of the effect of studio operations and even limited outside program production on the network's cost structure. While it is probably true that they make little money on studio ownership, the producers claim that with even a limited amount of productions, the networks by having the potential to make programing in their own studios effectively hold down the prices they pay for programing. If this were the case, and the networks were no longer allowed to rent out their studios to the producers of their programing, the cost of programing in general could rise.

License Renewals

In May the House of Representatives passed a license renewal bill which increased the license term to five years from three. It also requires stations to ascertain and meet the needs of their viewing market, and prohibits F.C.C. consideration of cross-ownership situations in renewal applications. As stated earlier, the F.C.C. is asked to settle the broad cross-ownership question six months after enactment of the bill. The bill is now in the Communications Subcommittee of the Senate, after which it will go to the full Senate, and then, if passed, to a Senate-House Conference to iron out differences. So far the big difference is in the license term. The Subcommittee appears to be leaning toward keeping a three year term. It is possible the conference bill will settle on four. Aside from lengthening licenses, the favorable aspect of the bill is that it would generally make it harder for competitors to challenge station renewals. With respect to the major broadcasters, the practical effect of this issue is that it might reduce paperwork and legal expense, and, in

the case of Cox, that the cross-ownership would not be considered on a case by case basis. Cox's affected licenses don't come up again until 1976, so this is probably a moot point anyway.

Copyright

Aside from the competitive impact of the reduction in proposed payments by the cable television industry, and the elimination of the proposed sports blackout on C.A.T.V., the major item of importance in the pending copyright bill is the performance royalty, which would require radio and television stations to pay a fee to performers, half of which would go to recording artists, and half to record companies. This is similar to current payments to composers. The National Association of Broadcasters has estimated the annual impact at $11.5 million, primarily on music-oriented radio stations. In the case of broadcasters who own record companies, particularly CBS, it may actually be a plus, as is evident by the fact that CBS is the only major broadcaster not fighting the bill.

Drop-Ins

The Office of Telecommunications Policy released a report last fall suggesting that 62 new VHF stations could be dropped in to the top 100 markets by easing some technical restrictions on bandwith separation, antenna height, etc. An industry technical organization studied the plan, and concluded that in only eight cases was there even a possibility of the plan working. Then the OTP came up with a new study in May, 1974, which under various changes in technical standards would permit from 33 to 83 new stations. The F.C.C. is holding a study on the matter at the request of two outside parties. The point of all this is again to diversify program sources, and hopefully produce a fourth network. From a practical standpoint, it would be economically impractical to produce a network operation even if these stations were permitted, because the number of markets would still be far too small to support the kind of economic investment that would be involved. Most of the markets in which OTP feels additional stations could be added are in the bottom 50 of the top 100. Only three of the top ten markets are cited as possibilities. In markets like New York and Los Angeles with a substantial number of stations, the three network stations command about two-thirds of the audience indicating the potential audience for independents may be about a one-third share. (Without a fourth network the proposed new stations would have to be independents, because every major market already has three network affiliates.) However, many of the top markets already have one independent station, and the audience and revenues that could be attained by a new independent in those markets are unlikely to be sufficient to cover their program costs. Only in the largest cities are existing independent stations generally profitable now. In fact, F.C.C. figures for 1972 show total profits for all VHF independents at $19 million pretax compared to $438 million for affiliates. Of the $19 million, we estimate Metromedia's four VHF independents, Cox's station in San Francisco, and a couple of others in New York, Chicago, and Los Angeles accounted for all or more than all of the total earnings. While the OTP could win its point, we doubt it, and in any event, there is likely to be no impact except, perhaps, in one or two isolated cases.

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Regulatory Climate

This month, for the first time this year, there will be a full seven member F.C.C., and all seven will have been appointed, (or in one case re-appointed) by the current Administration. The industry's most vociferous critic, Nicholas Johnson, left last year, and the current lineup will probably be somewhat more conservative, and, consequently, more status-quo-oriented than was the last full Commission.

Political rhetoric to the side, it appears that the F.C.C. will be more industry oriented than it has been. The crescendo of potential bombshells during 1972-early 1973 period, capped by the proposed elimination of drug advertising in certain time periods early last year has subsided, and most of the major issues have been or will shortly be settled. The drug advertising proposal sent the broadcast group down, before the general decline in the market, and they have not yet recovered. The current period of relative calm should be at least an indirect plus in the investment prospects for the group, in that the risk of major negative developments, while always there, seems more remote today than in some time.

Conclusion and Market Evaluation

As one can see in the accompanying table, the broadcast group substantially underperformed the broad market averages last year, particularly in the first half. As mentioned earlier the regulatory turmoil, particularly the drug advertising ban scare was partly responsible; and of course the outlook by most economists for 1974 came increasingly into question. Thus far in 1974 the stocks have outperformed the market; however, the performance has been quite mixed. While the network companies are expected to have somewhat bigger earnings gains this year than the group operators, we believe the divergence of stock performances reflect the varying degrees of liquidity and institutional interest more than the differing profit outlooks.

The improvement in relative performance thus far in 1974 probably reflects the earlier turn-down of the group, the growing evidence that 1974 results are going to be better than expected, particularly in the case of the networks, and the fact that the industry is not faced with some of the current probelms plaguing many industries, particularly the need for money.

We believe that the industry's revenues, and particularly its profits can grow somewhat faster than the economy's and that the group can sell at a modest premium to the market. Right now it is at a modest discount, on balance, although, as mentioned before, results are highly divergent. In a market turnaround we would expect interest to spread to the entire group and to correct the current fundamentally unjustified discrepancies in P/E's. We feel Cox Broadcasting is the best vehicle to play under that theory. Similarly Taft seems to be out of line. We have been recommending CBS, ABC, and Capital Cities for some time, and continue to do so at these currently still-depressed levels. A move in Metromedia would require a clear sign that operations have turned around, but we think the stock can be held as a speculation on that recovery.

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BROADCAST GROUP PRICE AND E.P.S. DATA

Price

	Amer. Broad.	CBS	Capital Cities	Cox	Metromedia	Taft	S&P 425
Dec. 29, 1972	38 1/8	50 1/8	61	35 7/8	31 7/8	57 1/2	131.87
Jun. 29, 1973	22 3/4	33	43	23 1/4	16 3/4	25 3/4	116.72
Dec. 31, 1973	23 1/4	25 5/8	31 3/4	16 3/4	7 3/4	16 7/8	109.14
Jun. 28, 1974	24 3/4	35 3/8	34 1/4	13 5/8	7 1/4	17 3/8	97.39

Percent Change

	Amer. Broad.	CBS	Capital Cities	Cox	Metromedia	Taft	S&P 425
1st half 1973	-40.3%	-34.2%	-29.5%	-35.2%	-47.5%	-55.2%	-11.5%
2nd half 1973	+ 2.2	-22.3	-26.2	-28.0	-53.7	-34.5	- 6.5
Full year 1973	+10.4	-48.9	-48.0	-53.3	-75.7	-70.7	-17.2
1st half 19	+ 6.5	+39.0	+ 7.9	-18.7	- 6.5	+ 3.0	-10.8

	Price	E.P.S. Year Ended 12/31			P/E Multiple on	
Company	7/1/74	1973	1974E	1975E	1974E	1975E
American Broad.	24 1/8	$2.77	$3.05	$3.25	7.9x	7.4x
CBS	34	3.32	3.95	4.25	8.6	8.0
Capital Cities	33 5/8	2.61	2.75	3.15	12.2	10.7
Cox	13 1/2	1.82	1.95	2.15	6.9	6.3
Metromedia	6	1.35	0.75	1.00	8.0	6.0
Taft*	17 3/8	2.59	2.65	2.85	6.6	6.1

** Year ended following March.*

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It is interesting to note that the highest P/E's several of these stocks ever got to was not in the heyday of the television industry, but in 1971-1972, because of the same forces at work today--institutional ownership and lack of liquidity. The leverage in this group is better than in most, and we believe it is a good way to play a market turn. But first, of course, the market has to turn.

Dennis H. Leibowitz

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THE TELEVISION PROGRAMMING INDUSTRY

DENNIS B. McALPINE

JANUARY, 1975

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SUMMARY AND CONCLUSION

Until recently, most television prime time program suppliers managed to offset their production costs with the license fees received from the networks. Any revenues derived from foreign syndication allowed the supplier to make a small profit. The big profit payoff came when, or if, the series was placed in domestic syndication after its network run. However, in recent years, the costs of production have grown substantially faster than network license fees. In addition, in many cases foreign syndication revenues have also diminished. Thus, in most instances, the costs of producing a series today now outstrip the revenues derived from both network license fees and foreign syndication with deficits of $20,000-40,000 per episode being commonplace. The reduction in the amount of network prime time programming, as a result of the prime time access rule, and the smaller number of original episodes per season have also reduced the chances that a series will last long enough on the network to accumulate enough episodes to be valuable for domestic syndication. This squeeze will be further exacerbated by recent union settlements and increased restrictions on importation of American programming by foreign governments. Unless network license fees are increased substantially we would expect a number of program suppliers to withdraw from the industry.

While movies - both theatrical and "made-for-TV" - have proven to be valuable programming in the past, particularly for ABC, their lack of continuity in holding an audience, their apparent decline in audience appeal, their increased costs and their eventual scarcity will result in a diminished use of this product form. We would anticipate that, where possible, networks will shift from this format to a greater use of series programming.

In recent years, the networks have managed to increase profits dramatically through the use of more reruns and through their ability to place pressure on program suppliers to keep prices at abnormally low levels. On a collective basis, we feel that the number of reruns will not be increased as pressure mounts from the suppliers, the actors and various regulatory bodies. This will provide a longer term pressure on profit margins assuming no change in mix of programs carried. We conclude that the spread between the fees paid by the networks for programs and the higher costs incurred by the supplier to produce the programs has reached a maximum and must be narrowed. We would expect the program prices to be raised substantially over the next few years as new series are purchased. If the networks are successful in keeping the lid on prices for the 1975-76 season, we feel that prices will rise even higher in subsequent years.

If program prices are increased by 10-12% for the 1975-76 season, the impact on the networks' profits will not be overly significant until the fourth quarter of 1975 and, of course, for all of 1976. The impact of higher program costs may be compounded in late 1976 if the FCC either partially or totally rescinds the prime time access rule for the 1976-77 season. Costs for 1976 will also be increased due to the incremental news costs associated with coverage of the presidental elections

The potential offset to higher series programming costs may be the use of lower priced product such as variety and game shows and less elaborate sets, locales and "periods" for action/adventure long form shows. The increased use of game shows may be restricted because of their current domination of the prime time access period until that rule is rescinded.

The major question about network profits will be their ability to raise prices at a higher rate than costs. Given the current weak economic outlook for 1975, this ability seems somewhat limited although the more positive outlook for the economy in 1976 does seem hopeful.

Over the longer term we must conclude, therefore, that all three networks will come under profit pressures as costs increase. Within the network triumvirate, we conclude that CBS is in the strongest position with its successful development of a number of "independent" producers, its strong affiliate lineup and the greater likelihood that a series will last long enough on CBS to become valuable in syndication. Conversely, we must conclude that ABC is in the weakest position among the three. Its recent climb to relative parity in prime time has been through the heavy use of movies and sports and was abetted by the reduction in prime time hours caused by the FCC's prime time access rule. ABC has historically been weak in series programming and this weakness is likely to continue due to its weaker affiliate lineup and lack of program longevity. This latter situation will probably continue to force suppliers to offer their best product to the two other networks. In fact, as the situation currently stands, we must conclude that the chances are good that the ratings gap between ABC and its competitors will widen rather than narrow in the coming years.

With regard to this outlook, we are reminded of the "Christmas Carol" in which Scrooge asks the Spirit of Christmas Future, "Are these the shadows of things that must be or are they the shadows of things that might be?" ABC has recently made a number of management changes designed to improve their prospects. The alteration of their future course into one of full competitive parity will be difficult but perhaps, they, like Scrooge, can successfully change these shadows.

THE MARKETPLACE

In 1973, the networks spent a combined total of $1.076 billion on technical and programming expenses. Of that total, $624.4 million, or 58%, was amortization of the costs of programming supplied by outside sources. For the purposes of this report, this is the total that we will be discussing. Table 1 shows the trends for network revenues, expenses and programming costs for the period 1969-1973. As this table shows, network revenues over the last five years have grown at a 5.5% compound rate while expenses have risen at a 3.7% rate. The leverage inherent in network profits is shown by its spectacular growth rate of 31.4%. Several special occurrences account for this recent growth which should be pointed out:

1. The loss of cigarette advertising in 1973;
2. The loss of 1/2 hour per evening in prime time due to the introduction of the prime time access rule in 1971;
3. The return to profitability of the ABC network in 1972 and 1973.

Table 1 also points out the comparatively slow growth in programming costs from outside suppliers, in particular, that associated with series programming. There are several reasons for this phenomenon:

1. The use of less original episodes and more reruns;
2. The use of more "Other Features" which are primarily "made-for-TV" movies and the use of these movies as pilots for series candidates.
3. The inability of program producers to obtain higher prices and their consequent deficit financing of series. The increases in costs of theatrical films shown on television have also been relatively small in the last few years, partly through the use of more runs per movie which results in longer amortization schedules.

Network programming is spread throughout the day and night, but can be broken down into several major categories:

1. Prime time (8 p.m.-11 p.m., Sunday through Saturday);
2. Daytime (10 a.m.-6 p.m., weekdays);
3. Childrens programming (mainly Saturday and Sunday mornings);
4. Other weekend (primarily sports);
5. Early morning (7 a.m.-9 a.m., weekdays);
6. Late night (11 p.m.-2 a.m., weeknights).

TABLE I

NETWORK GROWTH IN REVENUES & EXPENSES

	1969		1970		1971		1972		1973		Growth* Rate	% Gain
	$	% Of REV	$	%	$	%	$	%	$	%	69 - 73	73 vs 7
Total Revenues	1144.1	-	1144.6	-	1099.1	-	1271.3	-	1404.9	-	5.5	10.5
Total Tech. & Prog. Costs	929.7	81.3	973.8	85.1	925.0	84.5	1026.1	80.7	1075.8	76.6	3.6	4.8
Amort. Of Outside Prog.	564.1	49.3	596.1	52.1	567.0	51.8	571.9	45.0	624.4	44.4	1.7	9.2
Theatrical Film	126.1	11.0	116.8	10.2	113.8	10.4	132.2	10.4	140.5	10.0	3.6	6.3
Other Features	5.5	0.5	5.1	0.4	9.8	0.9	15.2	1.2	17.4	1.2	46.0	14.5
Other Prog.	432.5	37.8	474.2	41.4	443.4	40.5	424.4	33.4	466.6	33.2	0.4	9.9
Total Expenses	1051.3	91.9	1094.5	95.6	1040.5	95.1	1160.4	91.3	1220.0	86.8	3.7	5.1
Total Pretax Income	92.7		50.1		53.7		110.9		184.8		31.4	66.6

Source: FCC Data
*Compounded Least Squares

Of these categories, prime time and daytime are obviously the most important. In terms of the use of outside programming sources, very little is used in early morning ("Today", "CBS Morning News", "Captain Kangaroo" and, in 1975, "AM America") with the networks producing those programs. The case is not so clear in late night with some programming being network produced ("Tonight", "Tomorrow", and portions of "Wide World of Entertainment") and the rest being movies, either low budget "made-for-TV" movies or theatrical releases, most often after their prime time showings ("CBS Late Night Movie", "Wide World of Entertainment"). Most of the weekend, non-children's programming is sports or news programming which is network produced with most of the children's programming coming from outside sources. Daytime programming is mostly non-network produced although extensive use is made of network facilities for production of these programs. Of course, the vast majority of prime-time programming is supplied by outside sources with news and public affairs programming being the major exception. For the purposes of this report, we will be primarily concerned with prime-time programming.

In a recent report prepared for the FCC*, Alan Pearce presented the following estimates for programming costs and revenues for all three networks during 1972. It should be pointed out that programming revenues are gross totals before advertising agency commissions and station compensation. Programming costs exclude network microwave feed costs and network selling, general and administrative expenses. The costs and revenues for news and sports are somewhat inflated since 1972 included both the presidental elections and the Olympics.

	Costs (MM)	Rev (MM)
News & Sports	$300	$ 400
Prime-time	480	800
Daytime	105	300
Late-night	25	59
Children's	25	80
	$935	$1,639

*"The Economics of Prime Time Access", Alan Pearce, FCC, September, 1973

After deducting advertising agency fees and station compensation, Pearce concludes that news and sports programming is generally unprofitable with profit margins from prime time programming low in comparison with those of the other three time sectors. Part of the reason for this conclusion is the higher compensation during prime time and the burden caused by having a large share of the network overhead charged against prime time revenues. It would be safe to assume that profits from prime time in 1973 were substantial, however, and that a bad mistake in programming this time period could have significant negative impact.

THE PROGRAM SELECTION PROCESS

At this point, let us digress and see how the programs that are seen by the television viewer are selected through a protracted series of eliminations. Within this process, we shall also see where the networks have been successful in keeping programming cost increases to a minimum.

The process can begin as early as March or April with a story idea, and ends the following April with a series purchase. The story idea may come from a producer; the network may actually approach a producer with the idea; or, in some cases the network may produce the show itself. Typically a story idea will cost $2,000-3,000 with the network picking up the tab in many cases. If the story idea is accepted, it progresses to the development stage where a script for a pilot is prepared. The purpose of this stage is to see if the idea can be worked into an ongoing situation. The cost for this stage is typically $10,000-30,000 with the network funding most of this expense.

If the script development is accepted, the network will then fund a pilot to see if the idea can be conveyed properly on the small screen. However, prior to funding the script, the network and program producer sign a "Pilot and Series" contract which stipulates not only how much the network will pay for the pilot but also gives him an option at a set fee for each year of the series up through the fifth year or longer. In the past, there was normally a price escalation of about 5% per year built into the options but in recent years the dollar amounts are specifically set out and generally have been less than a 5% per year increase. There is usually another price escalation clause built into the contract which covers increased "industry" costs, such as union wage settlements. However, lately the producers have been subjected to a "flat rate" for the first year, in which, they are unable to pass these added costs on to the network. Thus, the producer is locked into a set price even before the pilot is shot or the series is accepted.

At this point, one might well ask why the program supplier accepts this deal when there are three buyers bidding for his product. While there are theoretically three buyers, in reality, there is often only one buyer. For example, the producer may be trying to sell a half-hour situation comedy which typically would go at the start of an evening. One or two of the networks might already have enough situation comedies and would not be in the market for a new one. Or, the format of the proposed series might be too similar to a show that is already running on that network which would reduce their interest in that product. Thus, the three buyers might easily be reduced to two, or even, one. In addition, since all three networks follow this "Pilot and Series" process, there is no alternative.

On top of this, there may be a multitude of producers who have a similar proposal up for selection. For example, there were 42 different suppliers of pilots for the 1974-75 season who offered from one to sixteen ideas. Thus, the competition for series programming is quite intense. The producers have also rationalized their acceptance of this contract to some extent by counting on added revenues from foreign syndication sales and the hope that perhaps the series will run for three or more years so that the producer will reap his benefits from the eventual domestic syndication of the programs. Perhaps, in the minds of some producers, there is also an egotistical reward that accrues from being part of the Hollywood scene and having his show carried on network television. As the losses continue to mount, the producers of these shows may find that the Hollywood mystique has little tangible value when it comes to paying bills.

Assuming that a "Pilot and Series" contract is successfully negotiated, the producer will then make his "pilot". Today, most situation comedy pilots are half hour shows costing $250,000-300,000. The supplier is given a set dollar level from the network and it is up to him to bring the pilot in at budget. This is often the case for situation comedies in which costs typically are fairly well controlled.

Action/adventure pilots are usually shot as 90 minute or two hour "movies of the week" costing $500,000-700,000. Generally, the network fee will cover 80% of less of this cost as the producer spares no expense to have a good pilot with strong guest stars and sets which might improve his chances of having the series accepted. Thus, the producer begins his deficit financing early in the game.

The pilot is then tested through on-the-air exhibition as a "movie of the week" and through private in-house screenings to see if the hoped for effect is achieved. The network programming moguls then add their own feel to the process, juggling the schedule to find the best time slots and counterprogramming against the opposition. The decision is then made as to which new shows to pick up as well as which old shows merit pink slips.

In a few cases, much of this process can be bypassed with a show moving directly from the idea stage to the series stage. Such was the case with "Rhoda" which was a spinoff of a character developed in the successful "Mary Tyler Moore Show" and "Good Times" which evolved from "Maude". Another example was "Planet of the Apes" which bypassed the intermediate stages and moved directly into series production based on the outstanding audience response to CBS's showing of the original "Planet of the Apes" theatrical films. In all of these examples, the network felt that the character had already been developed through exposure on other programming and that the pilot step could be eliminated.

The attrition in the selection process is extremely high. For the 1974-1975 prime time season, 24 new shows representing 20.5 hours of programming were added to the network rosters. This total is relatively high in contrast to previous years. These shows were culled from over 90 pilots, which places the fallout rate at about 75%. The rate goes even higher if we eliminate those shows (3) that went directly to series without any pilots. While statistics are not available on the number of story ideas and script developments, it is generally felt that 2/3's of the story ideas are eliminated before script development and 2/3's of those scripts that are developed are not committed to pilots. Thus, for every 100 story ideas, only 2 shows are finally accepted as series product.

Once a new fall show is selected, the network will normally purchase 11-15 episodes with an option for the remainder of the season. If the initial ratings are disappointing, the network must react quickly since cancellation notices must be sent out by mid-November. If a new show is cancelled during this period, the network normally pays a "short rate" fee of $50,000-200,000. This is to help make up some of the deficits incurred by the program supplier during this short production run on items such as sets, costumes, etc. A returning show is normally bought for a full season of 22-24 runs with up to one rerun per episode and, therefore, is not subject to a short rate settlement.

THE COSTS OF SERIES PROGRAMMING

The costs of producing television series vary substantially from program to program and from supplier to supplier depending upon the format, the status of the performers and the technique used to record the program. In general, a one hour program may cost $250,000-$300,000 to produce with a half hour show coming in at $125,000-$150,000. At current network license fees, deficit financing on long form programming may run as much as $30,000-70,000 per episode. Typically, short form programming, which is primarily situation comedies, is brought in fairly close to the license fee without much deficit financing necessary. There are exceptions, though, such as "The Mary Tyler Moore Show" which reportedly costs $130,000 per episode to produce but brings in less than that from the network fee.

These costs are broken down into three major categories:

1. "Above-the line";
2. "Below the line";
3. Overhead.

The "above-the-line" costs are established prior to shooting and include the costs of the story and its writing, the producer and director and their staffs, the talent and supplemental labor expenses such as fringe benefits, vacations, union benefits, holidays, etc. The major variable in this category is the talent cost which will depend on the status and number of stars in the show. Reportedly, Peter Falk receives over $120,000 per episode for each "Columbo" show. Talent costs of $20,000 per episode for stars do not seem unusual in today's market place. In general, above-the-line costs will run 35-40% of the total expense of producing a program.

The below-the-line costs are those associated with the actual production of the show and include the production staff, camera crew, set crew and expenses, wardrobe, makeup, sound, transportation, music, editing, titles, processing and related fringe benefits. Two major factors which cause higher below-the-line costs are filming on location and "period" shows. Location filming may increase below-the-line costs by another 25% depending on the locale. Several shows which exemplify "location" shooting are "Born Free", (shot in Africa); "Streets of San Francisco", "Sierra" (shot in Yosemite), "Hawaii Five-O", and "Harry-O" (shot in San Diego). "Period" shows are those that require special effects, costumes and props to depict a specific era other than the current one. Several examples of this type of programming are "Manhunter", "Paper Moon" and "Planet of the Apes". There are areas between these extremes where further cost reductions may be effected. For example, a "controlled" show such as "Owen Marshall" may make extensive use of interior sets with relatively few outdoor scenes as opposed to "Cannon" with extensive outdoor shooting.

Another major variable is the camera technique used. Usually theatrical films are shot on film using one camera shooting in short segments. Many short form programs now utilize a three camera technique in which long segments of the program are filmed using three cameras simultaneously, each from a different angle. The film editors then prepare a composite film using various sectors from each different camera angle. This technique is exemplified by the various MTM shows such as "Mary Tyler Moore", "Rhoda" and "Bob Newhart". The three camera style will typically cut costs by about $5,000 per episode. A third technique which is gaining acceptance primarily in short form programs is the use of videotape which greatly lowers editing costs. This technique, as used by Tandem Productions in "All In The Family", "Maude", etc., may result in savings of about $10,000 per episode over the one camera, film technique. Unfortunately today, videotape shooting currently is not viable from an economic and technical viewpoint in long form programming particularly in shows involving outdoor scenes.

The remaining costs are basically administrative overhead and facilities, such as studio rental. The independents, such as MTM and QM Productions, rent studios from a network, a private studio or from one of the majors. The majors will usually utilize their own facilities. In recent years, many of the majors have set up their studios as separate profit centers and will actually charge each of their productions a set fee.

So far, we have been discussing prime time programming. Before proceeding, let's digress briefly into the programming of other dayparts. Daytime shows are now either serials - i.e., "Edge of Night", "General Hospital" or game shows - i.e. "Gambit", "Password". Very often, both of these types of shows are shot using network facilities. In these cases, the network will typically pay the producer a fee which covers his "above the line" costs plus a profit while the network takes care of the "below the line" costs and overhead through the use of its studio and staff. Serials are normally shot under tightly controlled situations five days a week with a total weekly production cost of $60,000-70,000 or $12,000-14,000 per episode. By contrast, five episodes of a game show are usually taped in one day utilizing the same audience with a short break between taping of the five segments. Costs are extremely low since most prizes are donated for "commercial consideration" and typically run at $40,000-50,000 per week, or $8,000-10,000 per episode, with "above the line" costs accounting for about half of those expenses.

On late night shows, the "CBS Late Night Movies" normally cost $25,000-30,000 per run with multiple runs quite likely. The drama segments of ABC "Wide World of Entertainment" typically cost $80,000-100,000 per episode, but on a per run basis the cost drops to $30,000-50,000. A half hour children's show may cost about $70,000 but multiple showings drop the per run cost substantially.

SYNDICATION

A prime time program supplier derives revenues for his product from three different sources:

1. The network licensing fee, which is paid by one of the three major networks;
2. Foreign syndication fees, which are paid when the program is made available in foreign markets, usually prior to its domestic syndication sale and sometimes concurrent with its network carriage;
3. Domestic syndication fees, which are sales of the series to individual stations once the series has left network television, assuming that there are enough episodes of the product to make it worthwhile.

The previous section has discussed the fees resulting from network licenses. In this section, we will briefly look at the two other sources of revenue.

Foreign syndication consists of selling a network series outside the United States, usually before the program goes off-network. In Canada, the programs may be shown concurrent with their carriage in the United States, while in other countries there may be a lengthy delay in their showing. In either case, the revenues from foreign syndication are often received while the series is still on the network and usually before it reaches domestic distribution. Thus, this market represents a source of "up-front" dollars to the program supplier. Since foreign showings do not normally detract from the American audience, this causes the three networks no problems and provides another source of revenues to the program supplier. This also keeps the costs to the American network down. The only added expenses are the distribution expenses and the dubbing of a foreign language, if that is necessary.

In most foreign markets, there is relatively little value to most half-hour situation comedies since the nuances of American humor may not be present in the foreign markets, particularly Latin America. Thus, the greatest interest is in the better long form action/drama shows where total revenues from foreign syndication run about $40,000 per episode. Of this total, the program supplier may receive about $15,000 as his share. While this doesn't sound like much, over a full season of 22-24 originals, the total to the producer would be about $350,000, which can cover a good deal of programming expenses. By contrast, a half hour situation comedy may only bring in $10,000 per episode with half of that going to the producer.

There are several situations in the foreign market, however, which might cause some problems. The main one is an apparent nationalistic tendency in some countries to limit the amount of U. S. programming that may be carried on their stations. The hope is that the country will then develop its own domestic programming sources, which may or may not occur. This ceiling on imported programming tends to make the best shows more desirable while the weaker shows will be less successful in foreign syndication. Since, in many foreign countries, the television network is owned or controlled by the government, these limitations are fairly easy to effect. Occasionally problems may develop in the North American market due to an overlap between network coverage and syndication of the product. It is not unlikely that over the longer term we will see a further contraction in the foreign syndication market which could place added upward price pressures on the product to the networks.

The domestic syndication market consists of selling off-network series and movies to the individual television stations, one in a market. Very often a weekly program is "stripped", that is, rather than being shown once a week as it was on the network, a different episode may be carried each day of the week. Obviously, stripping requires a large number of episodes. Consequently, most series will have little value in domestic syndication unless they have been on the network for at least three seasons. With the reduction of one half hour per day

of prime time programming due to the prime time assess rule, and with the reduction in number of originals produced, it has become more difficult for a series to last long enough to achieve a value for domestic syndication. Table 2 lists the programs at the start of the 1974-75 season which had two or more seasons on the air. This table excludes the various "Night at the Movies" since movies are usually sold as separate packages.

TABLE 2

PROGRAM LONGEVITY

Program	Years	Network	Supplier
"Gunsmoke"	19	CBS	Ind.
"World of Disney"	13	NBC	Disney
"Carol Burnett"	7	CBS	Ind.
"Ironside"	7	NBC	Universal (1)
"Mannix"	7	CBS	Paramount
"Adam-12"	6	NBC	Universal (1)
"Hawaii-Five-O"	6	CBS	Ind. (1)
"Medical Center"	5	CBS	MGM
"Marcus Welby"	5	ABC	Universal (1)
"Odd Couple"	4	ABC	Paramount
"Mary Tyler Moore"	4	CBS	MTM
"All in the Family"	4 (2)	CBS	Tandem
"Cannon"	3	CBS	QM
"Sanford & Son"	3 (2)	NBC	Tandem
"Emergency"	3 (2)	NBC	Universal
"The Rookies"	2	ABC	Ind.
"Streets of San Francisco"	2	ABC	QM
"Kung Fu"	2 (2)	ABC	Warner
"Maude"	2	CBS	Tandem
"The Waltons"	2	CBS	Lorimar
"Mash"	2	CBS	20th Century Fox
"Bob Newhart"	2	CBS	MTM
"Barnaby Jones"	2 (2)	CBS	QM

(1) Series has been presold in domestic syndication

(2) Mid-season replacement

As this table indicates the attrition of program series is quite high as one moves past the second season. A series may be lucky and last longer than its ratings warrant if the network has so many problems with its new shows that it can't afford to make all the programming changes that it would like to. As the longevity of a series increases so does the glint in the producer's eye as he envisions the payoff from domestic syndication. This assumes, of course, that the series will have value in the after market which may not be the case.

That glint has become even brighter as the prices for off-network shows have increased in recent years, triggered by Universal's presale of several popular shows - "Ironside", "Marcus Welby", "Adam-12" - while they were still running on-network. Prior to that, a good long form show could expect to generate sales of about $100,000 per episode. Of that total, the distributor would receive 35-40% of the gross and would recoup certain costs such as prints, shipping, etc. Residuals to actors and producers might account for another $34,000-40,000 with the remainder going to the program supplier. After the Universal presale, the new price level seems to be a gross of $150,000-170,000 with little increase in either the distributors' fee or residuals (excluding the recently renegotiated residual payment schedule). This added profit provides incentive for the supplier to continue or, even, increase the amount of deficit financing on a series that he would be willing to produce.

Recently, several of the other action/adventure shows which have been placed in domestic syndication have proven to be less of an attraction than expected. Apparently, the story plots are too easy for the viewer to recognize as having been seen before and consequently the ratings have not held up. Since many stations had anticipated amortizing the cost of the syndicated series over several years, this phenomenon does not make them very happy. This situation may force prices for syndicated product downward somewhat when similar series are offered in the future.

Thus, that pot of gold at the end of the rainbow, or, in this case, the end of on-network telecasting, continues to provide an incentive to the program supplier to resort to deficit financing.

MOVIES

As television grew, the attendance at movie theaters dwindled and the movie producers viewed television much as farmers view the septennial visit of the locusts - with fear. As the medium developed, the two forms of entertainment learned that they could coexist, that they basically served different audiences and that television might be a prime purchaser of theatrical features. The television people learned that viewers did want to watch movies and that they could be a valuable source of programming.

Table 3 shows the number of theatrical films carried by the networks beginning with the 1961-62 seasons. This data was supplied in the filings of the program suppliers for the FCC hearings on Pay-Television. As the table shows, the number of features shown increased dramatically from 1961-62 to 1967-68 and then stabilized somewhat. In addition, the length of time from theatrical release to network showing has also decreased substantially. Using the median length of time, the interval dropped from 8.6 years in 1961-62 to 4.5 years in 1973-74. The main difference between the mean values and median values is apparently caused by the delay in releasing certain blockbusters to television which would raise the mean values to a higher level.

TABLE 3

AGE OF NETWORK MOVIES BY SEASON, IN MONTHS ELAPSED BETWEEN FIRST THEATRICAL RELEASE AND FIRST TELECAST

Network Season	Number of Films	Average No. of Months Elapsed (Mean)	(Median)
1961-62	45	96.29	103.0
1962-63	72	77.24	66.5
1963-64	60	92.78	96.5
1964-65	85	87.66	82.0
1965-66	119	84.71	71.0
1966-67	127	73.70	62.0
1967-68	132	59.92	51.0
1968-69	128	54.66	42.5
1969-70	117	66.15	45.0
1970-71	98	59.21	50.0
1971-72	133	62.74	51.0
1972-73	107	69.83	53.0
1973-74	118	61.90	54.0
Total 1967-74	833	61.91	51.0
Grand Total	1341	70.04	54.0

Source: Statistical Research, Inc.
Analysis of Industry Data
1961-62 through 1971-72.
Columbia Pictures Television Research
For 72-73, 73-74 Data

This table would seem to indicate that since the 1967-68 season, the use of movies on network television has leveled off or even declined. This conclusion is misleading due to the birth of a new type of movie - the "made-for-TV" feature. As the networks saw the theatrical film libraries becoming depleted and the prices increasing, they began to order specially made features for their use. These features were substantially cheaper but still attracted a reasonable audience. Typically, a theatrical feature might cost $700,000-800,000 while the "made-for-TV" films would cost about half as much. In recent years, the networks have discovered another use for "made-for-TV" movies - the testing of a potential series with the movie actually being a pilot. This allows the network to derive a financial benefit from their program development expenses as well as providing a better test as to the potential success of the series.

Table 4 shows the growth in the number of "made-for-TV" films as well as the trends for theatrical film showings. As this indicates, the former group now constitutes a larger percentage of the movies shown on television than original theatrical fare.

TABLE 4

MOVIES SHOWN ON NETWORK TELEVISION (ALL TIME PERIODS)

	Theatrical		Made-For-TV		
	#	%	#	%	Total
1965-66	120	99%	1	1%	121
66-67	142	93	11	7	153
67-68	138	97	4	3	142
68-69	141	89	17	11	158
69-70	140	77	43	23	183
70-71	113	68	53	32	166
71-72	133	51	94	49	227
72-73	107	42	149	58	256
73-74	118	40	180	60	298

Table 5 lists the suppliers of "made-for-TV" movies during the period of September 10, 1973 and September 8, 1974. The movies are broken down both by network and by first showings versus repeats. In some cases, these repeats may be of shows that were first carried in a previous season and not necessarily earlier in the same season.

TABLE 5

SUPPLIERS OF
MADE-FOR-TV MOVIES
(9/10/73-9/8/74)

	ABC		CBS		NBC		Total	
	New	Rep	New	Rep	New	Rep	New	Rep
MCA	22	22	3	3	11	5	36	30
Spelling-Goldberg	7	9	-	-	-	-	7	9
Columbia	6	3	-	-	1	4	7	7
Fox	2	2	3	2	1	1	6	5
Warner	3	2	1	2	2	3	6	7
MGM	2	2	1	2	1	1	4	5
Lorimar	3	2	1	2	-	-	4	4
GE Tomorrow	2	3	2	2	-	-	4	5
Wolper	4	3	-	-	-	-	4	3
Metromedia	2	1	-	-	1	1	3	2
D. Thomas	2	2	-	-	1	1	3	3
Dan Curtis	2	2	1	0	-	-	3	2
Paramount	0	2	-	-	2	1	2	3
QM	1	1	1	1	-	-	2	2
Network	9	8	3	3	-	-	12	11
Other	10	8	6	4	5	3	21	15
	77	72	22	21	25	20	124	113

As this table indicates ABC carried three times as many "made-for-TV" films as either of the other two networks. All three networks ran nearly as many repeats as first runs. MCA/Universal again leads in total number of films supplied with product shown on all three networks. Spelling-Goldberg ranks in second place with all of its product going to ABC. Both ABC and CBS made movies for their own use while NBC apparently did not. The rationale behind this practice is to supposedly allow the networks to keep their hands in on the production side and to help them ascertain what is happening to production costs. The other movies were made by a wide range of suppliers in fairly small quantities. As mentioned earlier, a number of these "made-for-TV" movies were actually pilots for new series such as "Senior Year" which evolved into the now cancelled "Sons and Daughters" series and the "Marcus-Nelson Murders" which became "Kojak"

It is obvious then that movies have become a major source, of prime time programming, particularly for ABC. There are basically two problems with movies on television:

1. They tend to cost more than the equivalent amount of series programming;
2. They have no continuity; that is, each movie must stand on its own.

Conversely, a series will develop its own following and viewers will watch that series to see what happens to their favorite character this week. Movies must be advertised and promoted on an individual basis and ratings may fluctuate wildly from week to week. For example, the CBS Friday movie on October 18, 1974 had a rating of 14.2. The next week the CBS Friday movie had an 18.7 rating. The problem of maintaining an audience for a movie becomes even more difficult when more than one network is offering a film at the same time. At the start of the season, both ABC and NBC offered movies on Tuesday nights from 8:30 to 10 p.m. For example, on January 11, 1975 ABC has scheduled John Wayne in "The Cowboys" as its Saturday Night Movie. In the same time period on the same day, NBC has scheduled John Wayne in "Chissom" as its movie. In these cases the viewer will go with whichever movie appeals to him at the time and probably will have little loyalty to either network.

As is the case with series programming, ratings for movies will vary substantially from film to film. Table 6 shows the ratings for both theatrical films and "made-for-TV" films for the 1970-71 and 1973-74 season by ratings. These are further broken down by first showings and repeat showings. It should be noted that a "repeat" might be a subsequent showing of a film first shown in a different season. For the purposes of this table we have also counted two part movies as two separate films. Thus "QB VII"-Part 1 (an 18.3 rating) and "QB VII"-Part 2 (a 21.8 rating) would count as two separate movies.

TABLE 6

RATING DISTRIBUTION OF FILMS SHOWN ON TV

	"Made-For-TV" Movies						Theatrical Films					
	70-71			73-74			70-71			73-74		
	New	Rep	Tot	New	Rep	Tot	New	Rep	Tot	New	Rep	Tot
>30	3	0	3	3	0	3	3	0	3	5	1	6
25-30	12	0	12	12	1	13	6	3	9	10	0	10
23-25	7	1	8	14	1	15	10	10	20	11	5	16
21-23	10	2	12	12	1	13	17	4	21	15	8	23
19-21	11	7	18	12	7	19	10	14	24	15	12	27
17-19	4	2	6	25	11	36	13	18	31	17	17	34
15-17	4	5	9	18	16	34	18	17	35	17	13	30
13-15	2	2	4	14	22	36	15	15	30	15	29	44
10-13	1	3	4	15	29	44	6	14	20	15	24	39
<10	0	0	0	0	25	25	2	4	6	1	8	9
	54	22	76	125	113	238	100	99	199	121	117	238

Source: Variety

As might be expected, reruns tend to have poorer ratings than first runs. The following table (Table 7) shows the median rating group for each of the categories of Table 6. In general, repeats had ratings 2-4 points lower than first runs. Part of this lower rating situation is because the repeats were shown in the summer when ratings are generally lower to begin with. However, a quick check of the share of audiences of repeats versus first runs dispels this as a major reason.

TABLE 7

MEDIAN RATINGS FOR REPEATS VERSUS FIRST RUN MOVIES

	New	Repeat
Made For TV		
1970-71 Season	21-23	17-19
1973-74 Season	17-19	13-15
Theatrical		
1970-71 Season	17-19	15-17
1973-74 Season	17-19	13-15

Table 7 also indicates some difference in the ratings garnered by "made-for-TV" movies versus those for theatrical films. Table 8 shows the percent of films and the cumulative percentage for each rating category. To reduce the seasonal effect, we have just used the first runs of each movie.

TABLE 8

RATING DISTRIBUTION OF FILMS SHOWN ON TV

	"Made For TV" Movies First Run				Theatrical Films First Run			
	70-71		73-74		70-71		73-74	
	%	Cum %	%	Cum %	%	Cum %	%	Cum %
>30	5.5%	5.5%	2.4%	2.4%	3%	3%	4.1%	4.1%
25-30	22.2	27.7	9.6	12.0	6	9	8.3	12.4
23-25	13.0	40.7	11.2	23.2	10	19	9.1	21.5
21-23	18.5	59.2	9.6	32.8	17	36	12.4	33.9
19-21	20.4	79.6	9.6	42.4	10	46	12.4	46.3
17-19	7.4	87.0	20.0	62.4	13	59	14.0	60.3
15-17	7.4	94.4	14.4	76.8	18	77	14.0	74.3
13-15	3.7	98.1	11.2	88.0	15	92	12.4	86.7
10-13	1.9	100.0	12.0	100.0	6	98	12.4	99.1
<10	0	100.0	0	100.0	2	100	0.8	99.9

Source: Variety

This table indicates that "made-for-TV" films did quite well in the 1970-71 season, better in fact than the theatrical releases for that year. However, in the 1973-74 season, the ratings for "made-for-TV" movies had slipped substantially and were roughly on par with those of theatrical first run movies. Thus, it appears that these special television films have lost some of their appeal, a trend which may continue in the future as better series programming is developed.

Another comparison which should be made is that of movies versus series programming. During the 1973-74 season there were thirteen movie series of which two (NBC Tuesday Night and NBC Sunday Night) were actually rotating series. Of the other eleven, ABC had five, CBS - three and NBC - three. The highest ranked movie series for the season through April 21, 1974 was the CBS Friday Night Movie which placed 20th with a 21.2 rating, followed closely by the ABC Tuesday Movie with a 21.0 rating. In total, eight "movies of the night" ranked in the top 40 shows, excluding the 14th ranked NBC Mystery Movie rotating series.

This is not bad until one considers that there were 18 series programs which did better than any movie series. Of those 18 series, 13 were carried by CBS which led to their substantial lead in the ratings race for the season. In fact, excluding movies and pro football, CBS had 18 of the top 31 series followed by NBC with 7 and ABC with 6.

Thus, it becomes apparent that movies in general will give reasonable ratings performance but will not provide the ratings given a top series show such as "All in the Family" or "Sanford and Son". Given their druthers, and sufficient good series programming we are sure that the networks would opt for series shows with their potential upside ratings and subsequent earnings power.

Another problem to be concerned about in regard to movies is the number of theatrical films that are yet to be shown on television. As Table 3 indicated, the time lapse between theatrical release and network carriage for films is dropping rapidly. At the momemt ABC states that it has a sufficient film library to sustain them through the 1978 or 1979 season. However, the advent of R and X rated movies which are not suitable for current television showing removes a number of films from consideration by the networks. Over the longer term a shortage of theatrical films may develop forcing the networks into more series shows. If nothing else, one can expect the price for the diminished library of features to rise substantially over the next decade. As schedules now stand, this would have to be a negative for ABC.

RERUNS

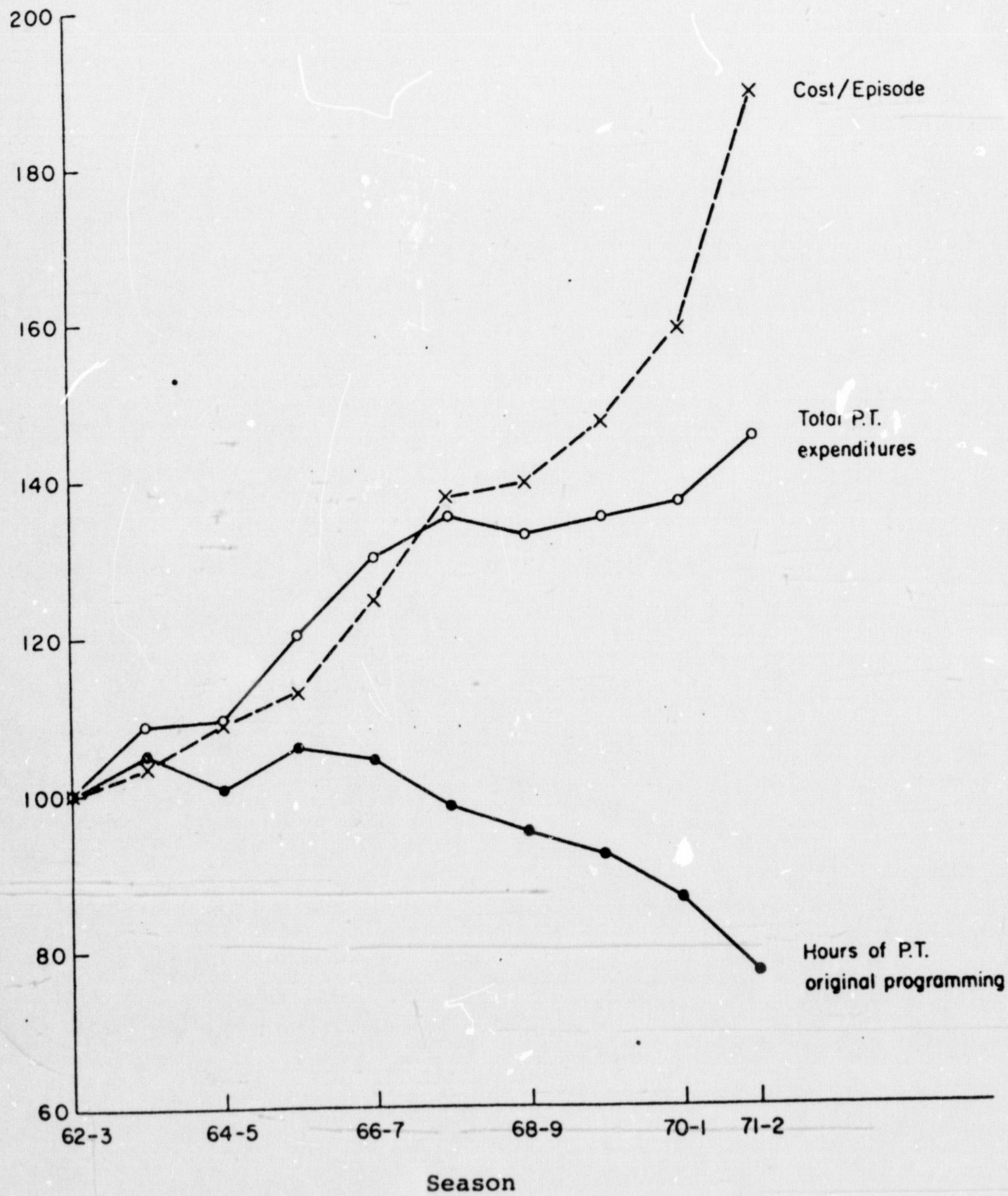
One of the factors that has enhanced the networks profits to varying degrees among the three networks has been the increased use of reruns. *During the 1961-62 season,*NBC ran 27 originals and 23 repeats on the "Wonderful World of Disney". In the 1971-72 season, this ratio had changed to 20 originals and 28 repeats. In another example, "Bonanza" in 1961-62 had 34 originals and 16 repeats while in 1971-72 there were 26 originals and 21 repeats. In the NBC 1961-62 season the number of original episodes per series varied from 26 to 40 with the average being 32. The number of repeats varied from 12 to 24 with an average of 18. By the 1971-72 season the range on originals had dropped to 18-26 with an average of 22. On the repeat side, the range became 17-28 with an average of 23.

Two conclusions can be drawn from these numbers:

1. The average ratio of originals to repeats declined from 1.8 originals/repeats in 1961-62 to 0.96 in the 1971-72 season;
2. The average number of episodes per series declined from 50 episodes in 1961-62 to 45 episodes in 1971-72.

*Most data from "Analysis of Reruns", Office of Telecommunications Policy, March 1973

CHART 1


200
180
160
140
120
100
80
60
Cost/Episode
Total P.T. expenditures
Hours of P.T. original programming
62-3
64-5
66-7
68-9
70-1
71-2
Season

Several comments about these conclusions should be made. Regarding point 1, it is only possible to show more repeat episodes than original episodes if the series has been on for more than one season. The only other alternative is to run one episode more than twice in the same season, which may be overdoing it somewhat. Thus, it helps a network to have a longer running series since there will be a better selection of episodes to use as repeats. Since there are 52 weeks in a year and there were only 50 episodes shown of a series in 1961-62 and, an even lower, 45 episodes in 1971-72, some other type of programming must be filling up the remainder weeks.

This non-series programming consists of specials, documentaries and/or sports. Specials would include such programs as the recent Frank Sinatra concert, a Hallmark Hall of Fame; the "Missiles of October" (a recent three hour drama) etc. Documentaries and public service shows also run a wide gamut of topics from the high cost of food to tornados in Xenia, Ohio to election coverage to Jacques Cousteau expeditions. These programs may even be repeated much like episodes from regular series. This is particularly true of seasonal shows such as the myriad of Christmas shows - "The Grinch", "Rudolph", etc. Some specials such as the even popular "Charlie Brown" also seem to reappear on the small screen with great regularity.

A major factor in the cutback of series prime time programming has been the introduction of more sports programming. In the last few years we have seen such additions as Monday Night Football, night-time World Series games, as well as regular season baseball night games, playoffs for hockey, college and professional basketball, etc., not to mention such great events as the Bobby Riggs-Billy Jean King tennis match. All these and more have helped chew up more of prime time in recent years and resulted in fewer episodes for most series.

The cost savings inherent in reruns become fairly obvious. Let us assume that a one hour original show costs the network $225,000 and that a rerun costs about 10% of the cost of the original, or $25,000. For the moment, let's forget the normal overhead expenses of transmission, sales and administrative expense. For a season of 32 originals and 18 reruns the total cost would be $7.65 million. If we remain at 50 episodes and use a ratio of 0.96 originals per rerun, (25 originals and 25 reruns) the total cost would be $6.25 million or an 18% decline in cost. If we further reduce the total number of episodes to the 1971-72 level of 22 originals/23 reruns, the total cost for the series drops to $5.5 million for 28% decline in programming costs. Thus, the savings from the higher use of reruns may be quite significant.

1973-74 season. At mid-season, CBS added another Tandem show

CHART 1

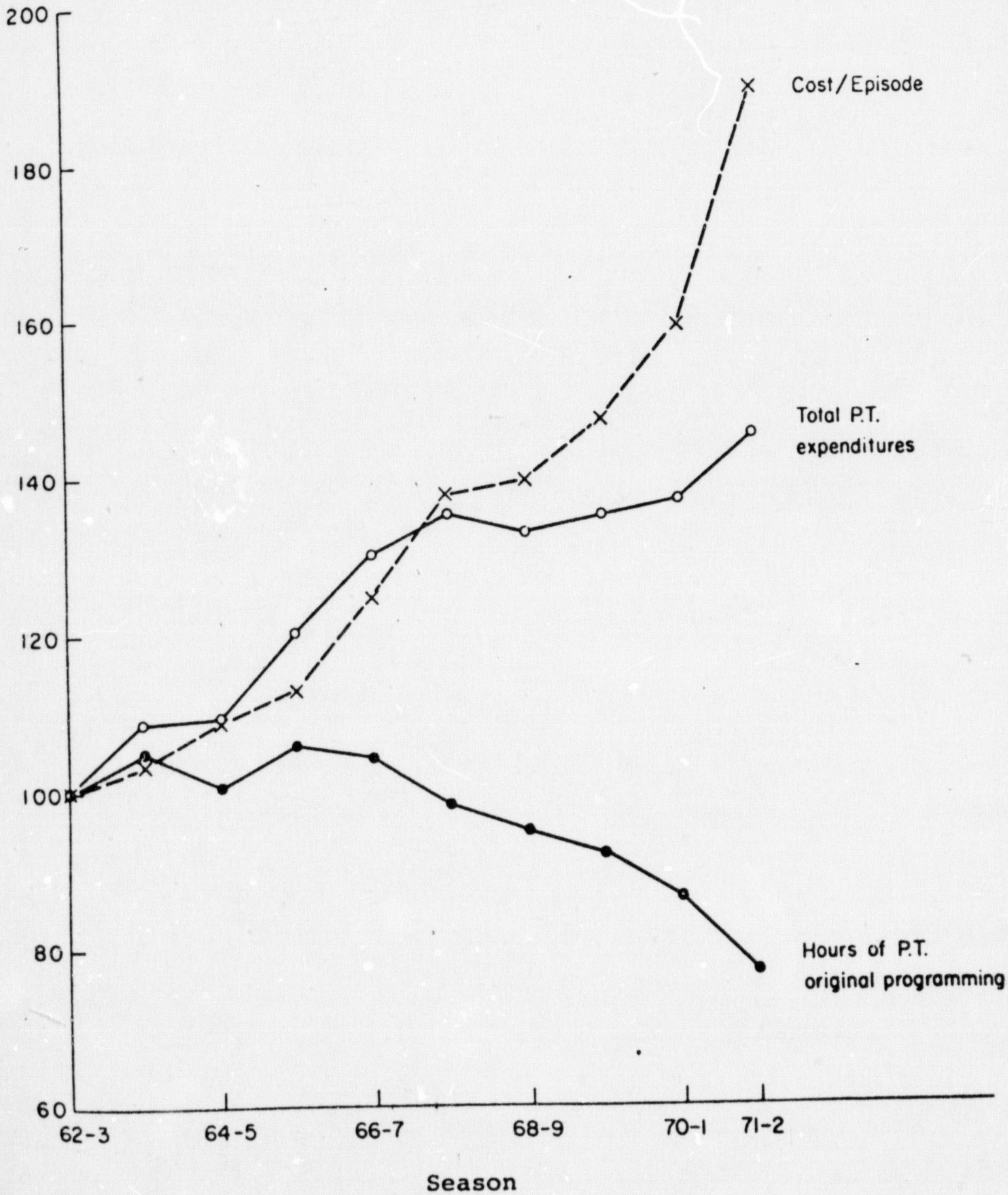


Chart 1 shows graphically how the use of more reruns has helped the networks. This data has been derived from material contained in the Office of Telecommunications Policy report on reruns dated March 1973. Since much of this data was not available in raw form, we have utilized index numbers using the 1962-63 season as a base of 100. We should also point out that the decline in number of hours of original prime time programming is not solely due to more reruns. This was particularly true in the 1972-73 season when the prime time access rule deleted one half-hour per day from the networks prime time schedule.

As Chart 1 shows, the network expenditures on prime time programming for the 1971-72 season were 45% higher than those of the 1962-63 season. This is despite a 23% reduction in the number of hours of original programming shown in prime time. Obviously then, the cost per episode has to rise substantially and it has. The cost per episode in the 1971-72 season was nearly 90% higher than in the 1962-63 season. On a compounded least squares basis, the expenditures on prime time programming have risen at a 3.9% annual rate; the hours of original programming have fallen at a 2.6% rate and; the cost per episode has increased at a 7.2% rate.

These trend lines certainly show a different picture from the cost data shown in Table 1 using the FCC reports. It then becomes obvious that, one of the major factors in the growth of network profits has been the increased use of reruns. Without this, profit growth might well have been minimal.

THE PROGRAM SUPPLIERS

The suppliers of prime time series programming can be divided into two categories:

1. The "majors" who are the major theatrical film producers with the exception of United Artists;
2. The "independents", who do not own their own studios but, when necessary, rent studio space from either the majors or the networks.

In addition to series programming; both the majors and a large number of independents also supply a large number of "specials". In addition to these types of programs, there is also the staple of television known as movies, either "made-for-TV" movies or those originally released theatrically.

Table 9 lists the revenues derived from television by the majors during 1973 as well as their revenues from theatrical distribution. This table should be used as a general indication of relative size since accounting policies differ from company to company and, of course, from year to year. This yearly variation is particularly true of movie revenues where one hit, i.e., "Godfather", "Exorcist", "Sting", may inflate revenues substantially for a short time. Another problem in comparability is the treatment of syndicated revenues under the new accounting standards. In 1973 Universal had $40.7 million from syndication

while a large percentage of Columbia's series fees were derived from this source.

TABLE 9

TELEVISION REVENUES OF MAJOR STUDIOS IN 1973 ($MM)

	Total Rev From TV	Film Rental	Series Fees	Theatrical Film Rev	TV Rev/ Movie Rev
Columbia (FY June 74)	$ 80.7	$28.8	$51.9	$111.3	0.73
MGM (FY Aug. 73)	53.4	39.4	14.0	99.4	0.54
Paramount (GW)	50	NA	NA	120	0.42
Twentieth Cent. Fox	35.8	8.4	27.4	151.8	0.24
United Artists (TA)	47.7	47.7	0	163.8	0.29
Universal (MCA)	119.9	10*	110*	87.5	1.37
Warner Comm.	56.7	34*	23*	152.7	0.37
	$444.2			$886.5	0.50

*Estimated

As this table indicates, Universal is the dominant force in television programming. In fact, their philosophy has been to emphasize television rather than movies to maintain a sense of stability. The recent box office success of "Sting", "Airport" and "American Graffiti" have reduced this concentration somewhat. Columbia Pictures ranks in second place in series programming although a large percentage of their series fees are derived from the syndication of older series, under the renamed Screen Gems operation. United Artists has been the one major who has eschewed the small screen with all of its television revenues derived from the sale of its theatrical releases.

Table 10 lists the major suppliers of series programming, both by number of programs and number of hours of programming supplied. This is further broken down by the network purchasing the programs. This listing is of programs supplied at the beginning of the new season and does not reflect any changes made for the "second season" which generally begins in January. For the purposes of this table, we have counted the rotating series, such as "Sunday Mystery Movie" ("Columbo", "McCloud", "McMillan and Wife"), as a regular series rather than 90 or 120 minute "made-for-TV" movies. This table also attributes a program to one of the listed suppliers even if there

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NETWORK PROGRAM SUPPLIERS BY NUMBER
OF PROGRAMS & HOURS OF PROGRAMMING

	71-72								72-73							
	ABC		CBS		NBC		Total		ABC		CBS		NBC		Total	
	#	HR	#	HR	#	HR	#	HR	#	HR	#	HR	#	HR	#	HR
Majors																
Columbia	3	1.5	0	0	1	.5	4	2	3	1.5	1	.5	1	1	5	3
MGM	1	.5	1	1	0	0	2	1.5	.3	1.3*	1	1	0	0	1.3	1.3*
Paramount (GW)	4	3	3	2.5	0	0	7	5.5	3	2	3	2.5	0	0	6	4.5
20th Cent. Fox	2	1	2	1.5	0	0	4	2.5	1	.5	2	1	0	0	3	1.5
Universal (MCA)	4	4	1	1	8	7	13	12	4.3	4.3*	0	0	7	7	11.3	11.3*
Warner Comm.	0	0	1	.5	2	1.5	3	2	.3	.3*	0	0	2	1.5	2.3	1.9
	14	10	8	6.5	11	9	33	25.5	12	9	7	5	10	9.5	29	23.5
Ind.																
Lorimar	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
MTM	0	0	1	.5	0	0	1	.5	0	0	2	1	0	0	2	1
GM Prod.	1	1	1	1	0	0	2	2	2	2	1	1	1	1	4	4
Tandem	0	0	1	.5	0	0	1	.5	0	0	2	1	1	.5	3	1.5
Other	4	3	9	7	6	6	19	16	3	3	9	7.5	6	6	18	16.5
	5	4	12	9	6	6	23	19	5	5	14	10.5	8	7.5	27	23
Movies																
Made For TV (90 Min.)	2	3	1	1.5	0	0	3	4.5	2	3	1	1.5	0	0	3	4.5
" " " (120 Min.)	1	2	0	0	1	2	2	4	1	2	0	0	0	0	1	2
Theatrical	1	2	2	4	2	4	5	10	1	2	2	4	2	4	5	10
	4	7	3	5.5	3	6	10	18.5	4	7	3	5.5	2	4	9	16.5
	23	21	23	21	20	21	66	63	21	21	24	21	20	21	65	63

*Includes Rotating Series

NETWORK PROGRAM SUPPLIERS BY NUMBER
OF PROGRAMS & HOURS OF PROGRAMMING

	73-74								74-75							
	ABC		CBS		NBC		Total		ABC		CBS		NBC		Total	
	#	HR	#	HR	#	HR	#	HR	#	HR	#	HR	#	HR	#	HR
Majors																
Columbia	3	1.5	0	0	3	2	6	3.5	2	1.5	0	0	3	3	5	4.5
MGM	1	.5	2	2.5	0	0	3	3	0	0	1	1	0	0	1	1
Paramount (GW)	3	2	1	1	2	2	6	5	3	1.5	1	1	1	1	5	3.5
20th Cent. Fox	1	.5	3	2	0	0	4	2.5	0	0	2	1.5	0	0	2	1.5
Universal (MCA)	4.7	5.2*	1	1	6	7	12	13.5	4	4	2	2	7	7.5	13	13.5
Warner Comm.	1	1	0	0	1	.5	2	1.5	3	3	0	0	0	0	3	3
	13.7	10.7	7	6.5	12	11.5	32.7	28.7*	12	10	6	5.5	11	11.5	29	27
Ind.																
Lorimar	.2	1.2*	1	1	0	0	2	2	0	0	2	2	0	0	2	2
MTM	0	0	2	1	0	0	2	1	1	.5	4	2	0	0	5	2.5
QM Productions	2	2	2	2	0	0	4	4	1	1	3	3	0	0	4	4
Tandem	0	0	2	1	1	.5	3	1.5	0	0	3	1.5	1	.5	4	2
Other	1	1	7	5.5	6	5	14	11.5	3	2.5	3	3	4	3.5	10	9
	3.2	3.2*	14	10.5	7	5.5	24.2	19.2*	5	4	15	11.5	5	4	25	19.5
Movies																
Made For TV (90 Min.)	2	3	0	0	0	0	2	3	2	3	0	0	1	1.5	3	4.5
" " " (120 Min.)	1	2	0	0	1	2	2	4	1	2	1	2	1	2	3	6
Theatrical	1	2	2	4	1	2	4	8	1	2	1	2	1	2	3	6
	4	7	2	4	2	4	8	15	4	7	2	4	3	5.5	9	16.5
	21	21	23	21	21	21	65	63	21	21	23	21	19	21	63	63

*Includes Rotating Series

are significant other interests. "Get Christy Love" (Wolper/Universal) is an example of this. We have also counted "FBI" and "Streets of San Francisco" as being supplied by QM Productions although Warner Communications was heavily involved in both series.

Several conclusions may be drawn from this table. Universal (MCA) has consistantly been the major series supplier with 12-13 hours per week, a large margin over the other suppliers. The place position fluctuates from year to year with Paramount usually gaining the runner-up spot although QM Productions has been a strong challenger. The majors have an advantage over the independents in that if a series is developed from a theatrical film, the movie supplier often produces the series. This was the case for "Born Free" (Columbia), "Planet of the Apes" (Fox) and "New Land" (Warner from "The Immigrants"). Spin-offs from existing programs, are, of course, developed by the original supplier i.e., "Good Times" from "Maude" by Tandem and "Rhoda" from "Mary Tyler Moore Show" by MTM.

There is also a relationship evident between the supplier and the individual network. Universal has been primarily a supplier to NBC, and ABC, secondly with relatively little product going to CBS. Fox has been primarily selling product to ABC and CBS while Columbia programs have been noticably absent from the CBS roster.

THE SYNDICATORS

Until 1971, the syndication marketplace consisted of two levels of competition:

1. Subsidiaries of the networks engaged in syndication;
2. Distribution arms of the "majors" who distributed both series programming and theatrical films to the television stations.

In 1970, the FCC ruled that the networks had to divest themselves of their syndication arms, feeling that their role as program purchaser gave them undue leverage in negotiating for a share of the program supplier's profits. A study prepared by A. D. Little on the subject showed that the three networks in 1968 had a percentage of the profits from domestic syndication in 58% of the entertainment hours of programs that they covered and a participation in foreign syndication of 60% of the hours that they carried. In 1967, these participations contributed $4.3 million in profits to the networks while their subsidiaries garnered another $3.5 million in distribution fees.

Thus, the three networks have all divested their syndication divisions in recent years, giving these new companies all previously negotiated rights to programming. ABC's operation was sold to an internal management group in early 1973 and became World Vision CBS spun off its syndication arm, along with its CATV operations in 1971, and created a new entity, Viacom. In mid-1973, NBC sold its operations to National Telefilm Associates, which was primarily a distributor of old movies and was itself, in turn, a subsidiary of Tele-Communications, Inc.

Of the three, Viacom has been the most successful with $14.5 million in program distribution revenue for 1973 and $7.1 in operating profits. For its fiscal year ended September 30, 1973, National Telefilm Associates reported revenues of $9.3 million with a net income deficit of $0.9 million. Financial results for World Vision are not available since it is no longer a public company.

As the product inherited from the networks diminishes in value, these companies face the task of acquiring new product for their catalogs from the independent suppliers. Viacom has been fairly successful with the acquisition of foreign distribution rights to several series from QM Productions, MTM and Lorimar. In addition, Viacom still has domestic rights to "Cannon", "Gunsmoke" and "Hawaii Five-O" which are still running on CBS. The company has also been building a film library which it is gradually placing in circulation.

The other major forces in syndication or program distribution are arms of the major film companies. Typically, these arms distribute primarily product made by that particular studio. For most studios, the raison d'être for a syndication arm is to distribute their theatrical films to the stations. In general, they do not have enough series programming to maintain and support the cost of domestic and foreign program distribution facilities and staff. However, the series product does add an increment of salable material to the base formed by distribution of theatrical films. The major exception to this rule is MCA which has placed more emphasis on developing series programming than theatrical films and, actually, regards the sale of theatrical films as a add-on rather than the reverse.

The syndicators provide a real value to the independent producers who are confronted with a heavy burden of deficit financing of a series. Typically, the independent will make a deal with a major or a Viacom-type operation giving them foreign distribution rights to the series plus an option on domestic distribution rights in return for an upfront cash payment and/or the use of facilities.

OUTLOOK

With the preceding sections on background, we must now look at the future of the programming industry and its impact on the broadcasters. The majority of program suppliers are understandably reluctant to discuss their cost structure in much detail in fear of upsetting their clients. However, it does seem apparent that few, if any, of the suppliers break-even with the license fees they receive from the networks. Many of the suppliers are still losing money even if the revenues from foreign syndication are included. In the current television season, industry gossip concedes that several shows are costing $60,000-70,000 more per episode to produce than they are generating from network fees. MTM Enterprises reportedly is not bringing any of its programs in at a profit, even including the highly successful "Mary Tyler Moore Show". While the extent of these losses may be somewhat exaggerated in order to evoke higher fees from the networks, it does seem apparent that producing television programs is an unprofitable operation. If it were not for the carrot of lucrative domestic syndication profits in the off-network market, this industry would have a problem justifying their financial existence.

Clearly, network licensing fees must be increased substantially over current loss-producing levels in order for many program suppliers to survive. In the last few months alone two large companies - Metromedia Productions and GE Tomorrow Entertainment - have announced their intentions to withdraw from the supplying of programming. Industry gossip indicates that there is a strong possibility that at least one major may also withdraw from this arena of red ink. The weak financial condition of one or two other majors may also dictate their eventual withdrawal as well unless fees are increased.

Early indications of the negotiations for 1975-76 programming fees are that the networks are maintaining a hard line on fee increases and that the spate of deficit financing will continue. This could result in still further fatalities among the program suppliers. We would conclude that unless the fees per episode are raised that eventually the number of suppliers will shrink until their bargaining power equals that of the networks. We do not expect that the deterioration will reach this stage but that fees will be modestly increased, if not this year, then in the next two years. Thus, the cost of network programming can be expected to rise substantially faster than they have in the last few years.

The alternative for the networks is to utilize more lower cost programming, specifically more game shows and variety shows. Already we have seen a number of new variety shows scheduled for the "second season" with Tony Orlando on CBS; Mac Davis and the Smothers Brothers on NBC. There is obviously a saturation level to the number of variety shows that the viewing public will accept, however, so this tactic may help keep costs down somewhat but will not totally solve the problem.

Game shows may be brought in for about 40% of the cost of a normal half-hour program so they may also present an alternative form of programming. However, the prime time access period of 7:30-8:00 p.m. is already virtually one big game show so the addition of even more game shows in the 8:00-11:00 p.m. time period may be quite difficult. If we assume a complete reversion of the prime time access period to the networks in the 1976-77 or 1977-78 season, we would anticipate a continuation of the heavy utilization of game shows in the early evening hours, however supplied by the networks rather than syndicators.

Another alternative would be cheaper versions of the existing types of shows. For half-hour programs this would mean more use of tape rather than film. For long form programming, cost reductions could be achieved through less use of location shooting, fewer "period" shows and more "controlled" programming with less outside shooting and greater use of interiors. This would tend to make television programs even less distinctive than they are now and, consequently, less apt to survive the three or four seasons required to accumulate the necessary episodes to make the series valuable for the off-network aftermarket. Thus, while costs may be shaved somewhat by these techniques, the total potential savings may not be that great. Therefore, we must conclude that the costs of prime timing programming must accelerate over the next few years. The impact of these increases on network profits will hinge on the ability of the particular network to increase its advertising revenues at an even faster rate.

If, as is likely, the networks increase their licensing fees somewhat but not enough to move the program suppliers into a profit position, the suppliers will continue to place a great deal of emphasis on eventual domestic syndication. This means that the supplier will offer his best product to the network that offers him the greatest potential for a long enough run to accumulate sufficient episodes to make domestic syndication viable. Table 11 shows the longevity of series for the three networks at the start of the last two seasons. As this table indicates, CBS has the best record of keeping a series on network for three years or more with NBC second and ABC third. In fact, at the start of the 1974-75 season, CBS had seven hours of series programming that had been on the network for three or more years while NBC had six hours with ABC having one and a half hours. Therefore, if possible, we would expect the program suppliers to continue to favor CBS as a buyer with ABC as third choice. This assumes that the supplier has his choice of buyer which, as we discussed in an earlier section, is often not the case.

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TABLE 11

LONGEVITY OF SERIES PROGRAMING

	Over 5 yrs.	# of Seasons 5	4	3	2	1	New Shows	Total Hours
Hours at Start of '74-75 Season								
ABC	0.0	1.0	0.5	0.0	3.0*	1.5*	8.0	14.0
CBS	4.0	1.0	1.0*	1.0	3.5	2.5*	3.5	16.5
NBC	2.5	0.0	0.0	3.5	0.0	1.0	8.5	15.5
'73-74 Season								
ABC	1.0	0.0	2.5	1.0	1.0	3.5*	5.0	14.0
CBS	3.5	1.0	1.0	1.0	2.5*	3.5*	3.0	15.5
NBC	3.5	0.0	0.0	1.0	3.5*	0.5	8.0	16.5

*Mid-season replacement

At this point, let us explore further the relationship between the program suppliers and the networks. Within the Hollywood community, CBS has had a reputation of paying top dollars for programs with ABC a distant third. In the last several years, it appears that the gulf between prices paid by the various networks has narrowed and that all three networks are now paying comparable prices for product.

Because of its relative rating weakness during the 1960's, ABC was forced to become somewhat innovative in its programming. Hence, the advent of "Monday Night Football" which brought sports into prime time on a regularly scheduled basis for the first time. The company, realizing the improbability of obtaining sufficient series programming to become competitive with CBS and NBC, emphasized two other areas of programming - sports and movies - and did well with this philosophy. When prices on theatrical films became too rich, ABC pioneered again with the "made-for-TV" movie and found a new source of relatively low cost product. ABC was particularly helped in their upward battle for equality by the prime time access rule which allowed them to eliminate seven half-hours of their weakest programs.

TABLE 12

SOURCES OF PROGRAMMING
FOUR YEAR SUMMARY

	ABC		CBS		NBC		Total	
	Hours	%	Hours	%	Hours	%	Hours	%
Majors	39 3/4	47	23 1/2	28	41 1/2	49	104 3/4	42
Independents	16 1/4	19	41 1/2	49	23	27	80 3/4	32
Movies	28	33	19	23	19 1/2	23	66 1/2	26
Totals	84		84		84		252	

Still, the differences between the three networks are substantial as demonstrated by Table 12. This table is essentially a four year summary of Table 10 which appeared in the section on the programming sources. Basically we have divided program sources into three categories:

1. That supplied by the major film makers;
2. That supplied by the "independent" producers and;
3. Movies, both theatrical and made-for television.

Table 12 shows the number of hours of programming supplied by these three sources to each network for the four seasons - 1971-72 through 1974-75. It also indicates the percent of each networks programming from each source.

The dependency of ABC on movies is quite evident from this table with films accounting for a third of its total prime time programming over the last four years compared to 23% for both of the other networks. CBS's high use of "independents" is also evident with that source accounting for almost half of its product versus 27% of NBC's programming and only 19% of ABC's showings. Conversely, nearly half of ABC and NBC's product comes from the major film studios. NBC's apparent reliance on the majors may be put into a more proper perspective when we consider that MCA/Universal supplied NBC with 28.5 hours of programming, or a third of NBC's total product. This leaves ABC as the network with a heavy dependence on the majors.

It is evident from Table 10 and 12 that CBS has done an excellent job of founding, developing and nuturing the "independents". This tactic has produced several benefits for CBS. It has obviously broadened the universe of program suppliers for not only CBS, but the other networks as well. This has probably had the side benefit of abetting the networks in their attempts to keep program costs increases to a minimum. This development has also helped CBS develop strong relationships with these independents, early in their life. This should give CBS a leg-up in selecting the most desirable product.

Let's digress a minute and see how this development has progressed. In the 1971-72 season, CBS began carriage of a new show - "Mary Tyler Moore" - which created MTM Enterprises and another new show - "All in the Family" - which created Tandem Productions. In the 1972-73 season, CBS added a new show from each of these suppliers: "Maude" from Tandem and "Bob Newhart"

from MTM. NBC also moved in a bit by adding "Sanford and Son" from Tandem. These levels were maintained at the start of the 1973-74 season. At mid-season, CBS added another Tandem show, "Good Times". This growth continued with the 1974-75 season with CBS adding two more MTM shows ("Rhoda" and "Paul Sands"). ABC finally moved into the picture by picking up an MTM show, "Texas Wheelers", which, although an MTM show, did not involve the same principals. As we enter the second season of 1974-75, CBS has dropped one MTM show ("Paul Sands") but was able to pick up a new Tandem show ("The Jeffersons") which had been under development for some time. ABC met with little success with its pseudo-MTM program and is now adding a new Tandem show, ("Hotel Baltimore") the sixth from that prolific supplier. The lead role played by CBS thus is quite evident as is the follow-on relationship of ABC and NBC.

It would logically seem that the creative talents of an independent can be stretched only so far before the quality of the product deteriorates or a saturation point is reached. This would imply that it would behove a buyer to be associated with the supplier early in the game rather than later on as he reaches maturity. It would also stand to reason that the buyer must constantly be developing new suppliers, i.e. CBS's current development of Lorimar, producer of the highly successful "The Waltons" and the not so successful "Apple's Way".

As discussed in an earlier section, MCA/Universal has been the dominant supplier of television programming - mostly long form action/adventure. MCA has had a long standing close relationship with NBC which would probably give that network somewhat preferential treatment. This should insure NBC of a steady stream of new product for the future.

Thus, when one considers series programming we must conclude that CBS has done an excellent job in developing the "independent" sources while NBC's long standing relationship with MCA holds that network in good stead. This leaves ABC in a far more tenuous position with the odds being rather high against its garnering rights to large amounts of new hit programming. As we shall see in subsequent comments this may pose some serious problems for ABC in the future.

As discussed earlier, one of the main reasons for ABC's move to relative parity with CBS and NBC in prime time has been its adroit usage of movies - both theatrical and "made-for-TV". The discussion on movies showed that films are moving from theaters to network television within a shorter time span. At this rate, the theatrical film libraries will probably be depleted of hit product in the not too distant future. When this problem first surfaced several years ago, the solution was the "made-for-TV" movie which filled two needs:

1. Providing program material at a relatively low cost;
2. Allowing the networks to test potential new series through the use of pilots as 90 minute or two hour movies.

While ratings for movies are not usually much above average, unless the picture is a blockbuster, they generally are not much below average either. Thus, they offer a fairly safe form of programming. One major disadvantage is that movies offer no continuity as a series does. The audience has little allegiance to a "Monday Night at the Movies" compared to an "All in the Family" and each movie must stand on its own merits. This poses a particular problem when two networks schedule movies at the same time. This currently exists on Tuesday nights (ABC and NBC) and apparently will also in the second season on Saturdays (ABC and NBC). In these cases, the movie afficionado can choose either movie depending on which one hits his fancy that night.

It seems apparent that most "made-for-TV" movies have little value in syndication unless they can be sandwiched in among a number of theatrical films. Therefore, unless the movie is a pilot, we would not expect a producer to accept deficit financing on this project. If, in addition, the ratings accruing to movies, particularly non-theatrical ones, are in a decline, as they seem to be, the network may get squeezed even further.

Thus, we see a number of reasons for the networks to move away from such a concentrated dose of films in their schedules. If such a move does come, we would anticipate an even greater demand for attractive series programming. This demand will be heightened even further if, and when, the prime time access rule is repealed. While a portion of that time will probably be reprogrammed with the same type of game shows, some new series will have to be developed.

In the section on reruns, we saw that the increased use of reruns has greatly aided the network's earnings. As one popular song states....."They've gone about as far as they can go...." and this option may no longer be available. This is particularly true in light of the recent FCC decision to investigate reruns and the strong urging of numerous acting guilds to force more, rather than fewer, original episodes in a series.

Of course, one can only run repeats if the originals are reasonably successful. Shows cancelled in mid-season have little use as reruns. Historically, this again places a heavier burden on ABC.

In summary, we foresee a strong likelihood that the costs of series programming will rise considerably faster in the future than they have in the past. We see more demand for series programming as the film libraries become bereft of strong product and as the networks pick up more programming time once the prime time access rule is repealed.

On an individual basis, we find CBS in an enviable position with a broad base of program suppliers and the higher chances of program survival for three or four years. On the opposite end, we see ABC confronted with the need to add large amounts of quality series programming as their ability to substitute movies diminishes.

We also see them as being in the weakest position to acquire this programming with a much narrower base of dedicated suppliers and their poorer record of success. Unless ABC can alter its image and its weaknesses, we are afraid that ABC will continue to rank as the weakest network. In fact, the gap between ABC and its two competitors may well widen rather than diminish.

Table 13 presents a summary of our estimates for network programming costs utilizing the breakdowns shown in the FCC data. As this indicates we expect that total outside programming costs will rise nearly 12% in 1975 with series programming expenses up 12%. It should be noted that if the program suppliers do successfully negotiate higher prices for the 1975-76 season, those increases will not significantly impact the networks until the late third quarter of 1975 when the new season starts. A major increase in prices on new programs may also force the networks to continue existing series since the prices for future seasons have already been established during the "pilot and series" negotiations. Based on ratings alone some of these might have been cancelled but price consideration may prove to be their salvation.

TABLE 13

PROGRAMMING COSTS ($MM)

	1973	1974E		1975E	
	$	$	% Change	$	% Change
Theatrical Films	141	154	+ 10%	169	+ 10 %
Other Films	17	19	+ 10%	22	+ 15 %
Other Programming	467	508	+ 9%	569	+ 12 %
Total	624	681	+ 9%	760	+ 11.6%

Thus, the major impact of higher prices for series product may not be fully reflected until calendar 1975. During that year, the networks will also have to contend with the high costs of presidental election coverage. A fourth quarter problem may also develop in 1976 if the prime time access rule is rescinded for the 1976-77 season and the networks have to add new programming to fill those additional time periods.

The major unanswered question then becomes whether or not the networks will be able to increase their revenues from advertisers enough to offset these cost increases. This will vary among the three networks with ABC likely to have the greatest difficulty in view of its recent ratings problems.

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Programing

Producers gripped in new crunch between costs and prices

They say rise in TV network fees is their only hope of survival, and escalation of program expense is now seen as all but certain; 8-10% hike seen for 1975-76 season

For the commercial television networks and their program suppliers, the time to haggle has arrived. With the new fall season off and running and the January replacements virtually in the can, attentions in New York and Hollywood are turning to what is in store for both sides next year. From all accounts, some unprecedented concessions may be in the offing.

The locking of horns between producers and network negotiators over the bargaining table has become a seasonal tradition, with the former predictably espousing a dire need for increased license fees—lest their hard-won enterprises fall by the wayside—and the latter attempting to calculate the delicate balance between need and greed. Customarily, the result has been a stand-off, of sorts, with the networks reluctantly upping the ante by three to five per cent—less than the producers say they need to survive, and more than the folks in New York would prefer to offer. Both manage to endure.

Perhaps it could have gone on forever. But a new element has poked its troublesome head into the negotiation process. Its name is inflation, and it's forcing reassessments on both coasts.

Producers are declaring in earnest that if the networks fail to open their purses to a previously unthinkable width this year producers might not be around to ask again next year. With production costs skyrocketing—particularly the below-the-line expenditures involving technical and material, rather than creative, resources—Hollywood is complaining of inequity. In verification, producers point to the networks' economic achievements of the past year—in which ABC, CBS and NBC collectively enjoyed a 66% increase in profits.

In addition, the escalating price of money is having an appreciable effect on producers' fortunes. Most banks, it is reported, are demanding that some 20% of the amounts producers borrow to finance their production costs be kept on deposit. Thus, if a producer is borrowing at prime interest rates (12%), he is in effect paying roughly 15% for the money he sees.

The producers' no-kidding attitude, however, is apparently being taken to heart. Indeed, officials at two networks (CBS declined to comment on the issue) predicted last week that, on the average, they will be increasing their program payments by eight to ten percent.

One network official assessed the situation as follows: "The cry has always been that we're not paying them enough. But now, because of the escalating costs, they're saying that they really mean it. There's no question that in the past few years there has been a greater increase of costs than had previously been the case. We're trying to the best of our limits to be responsive to those problems."

Said another: "There's a demand for an unprecedented increase. There's no question in my mind that the networks are going to be paying more."

Neither networks nor producers are anxious to divulge specific costs, particularly at a time of year when negotiations for the next season's offerings are at their most delicate stages. This same network official, however, postulated that in general the price the networks have been paying for an hour show averages out at between $230,000 and $240,000. For a half hour, he said, the average is between $120,000 and $125,000. There are numerous variables. For instance, series that are shot on location, such as NBC's *Born Free* (filmed entirely in Africa) or CBS's *Hawaii-Five-O* would obviously entail higher expenses than the likes of ABC's *Marcus Welby, M.D.* (which is shot primarily in the studio with a three-camera set up). Hit series obviously command higher payments as their tenancy on the networks increases in longevity. Such an increase has undoubtedly been realized by CBS's *The Waltons*, although the precise network payment for that particular series was not disclosed. But at the same time, *The Waltons* producer, Lee Rich, advises, the cost of a single installment of that series has gone up from $250,000 to $300,000.

The most severe ramification of Hollywood's inflationary woes is a general restructuring of the marketplace, several producers contend. Said Grant Tinker, whose MTM Productions has placed five programs in prime time this season: "Costs have increased at a far more rapid rate than what we're being paid. A few years ago, you could frequently make a show for what it paid you [on its initial network run]."

The first profit came in residuals for the second showing. Now, Mr. Tinker lamented, "it comes to a point where the show doesn't recover our costs." Thus, he concluded, the only way to make any money in television production is to "hope for a success" on the network run, thus making the product attractive in the eventual syndication marketplace.

But, Mr. Tinker noted, the longer a show stays on the networks, the longer the red ink mounts up. Thus, the ultimate result is nonproductivity. "Some would call this a nonbusiness," Mr. Tinker mused. "And some of us are just too stupid to get out of it."

Everyone concedes that TV production is a risky business—a gamble at best with no hope for a short-term return. While series like *The Waltons* have much less to worry about, Mr. Rich has been on the short end of that gamble before. He points to *Doc Elliott*, one of last year's many seasonal catastrophes (it died after 15 episodes), for which the prospects for syndication are nonexistent.

Mr. Rich said he understands CBS is charging $100,000 for one minute of advertising on *The Waltons*—averaging a $600,000 intake for each one-hour program. "Why, I don't get even half that sum to produce the show," Mr. Rich complained, "and I'm bound to deliver two 35 mm prints, plus two or three

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No exception to inflation. The minimum payments for writers of TV scripts increased Sept. 16, as provided under the new agreement with producers that was hammered out after the 16-week strike by the Writers Guild of America West last year. The new rate for a high-budget, half-hour prime-time program is $4,500, up from $4,150 for story and teleplay. A one hour show goes up to $6,400, from $6,000; a 90-minute show to $9,400 from $9,000; a two-hour show, $11,900, up from $11,500. Also increasing are the scale rates for rewrites, polishes, narrative synopses, formats, narratives, weekly employment and hyphenate compensation, as well as for nonprime-time dramatic programs (a 30-minute story and teleplay, to $1,657 from $1,563, for example) and freelance weekly rates ($683 from $644).

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Class of '74. The first fall luncheon of the International Radio and Television Society is a traditional affair, the speaker being the current chairman of the FCC and the dais peopled with broadcasting brass. FCC Chairman Richard E. Wiley's speech last week was newsworthy (see story page 44); this assembly of the top echelons of the radio, TV and cable television businesses is itself worthy of note. Pictured here (l-r):

First tier—Sam Cook Digges, president, CBS Radio Division; C. Wrede Petersmeyer, chairman, Corinthian Broadcasting; Walter A. Schwartz, president, ABC Television; William H. Fineshriber Jr., vice president, Television Motion Picture Association of America; Joel Chaseman, president, Post-Newsweek Stations; John A. Schneider, president, CBS Broadcast Group; Barry Zorthian, vice president, Time Inc.; Elton H. Rule, president, ABC Inc.; Patricia L. Nealin, president, American Women in Radio and Television, and manager of films, WGN Continental Broadcasting; Julian Goodman, chairman, NBC Inc.; Richard E. Wiley, chairman, FCC; Maurie Webster, president, IRTS, and executive vice president, Compu/Net; Leonard H. Goldenson, chairman, ABC Inc.; Arthur H. Taylor, president, CBS; Joseph F. Dougherty, president, Broadcast Division, Capital Cities Communications; Marvin L. Shapiro, executive vice president, Westinghouse Broadcasting, and president, Station Group; Herbert S. Schlosser, president, NBC; Clifford M. Kirtland, president, Cox Broadcasting; Edwin J. Stevens, president, Compu/Net; Peter Storer, president, Storer Broadcasting; Robert D. Wood, president, CBS-TV; Andrew M. Ockershausen, chairman, joint boards, National Association of Broadcasters, and vice president, Evening Star Broadcasting; Harold L. Neal Jr., president, ABC Radio.

Second tier—Richard W. Jencks, vice president, CBS; Arthur M. Mortensen, president and chief executive officer, Hughes Television Network; Henry Loomis, president, Corporation for Public Broadcasting; Sol J. Paul, editor and publisher, *Television/Radio Age*; John F. Dickinson, president, Station Representatives Associate, and president, Harrington, Righter & Parsons; Daniel T. Pecaro, executive vice president and general manager, WGN Continental Broadcasting; Arthur A. Watson, executive vice president, WNBC-TV New York; Robert L. Glaser, president, RKO General Television; Everett H. Erlick, senior vice presi-

16 mm prints. If they would only let me do it on 16 mm. . . ."

Mr. Rich maintains that times have never been better for the networks. A former executive at Benton & Bowles, he recalls that "we used to fight the networks on $2 or $3 cost-per-thousand figures and threaten to go to *Life*, *Look* or the *Saturday Evening Post*. Now advertisers are paying $4 or $5 and there's no objection; there's nowhere else to go."

If the grumbling of an ostensibly hard-pressed producer can be somewhat discounted for its prejudicial nature, consider this assessment from one who has worked on both sides: "It's a disgrace," said he of the networks' alleged tight-fistedness. "They're sucking in dollars like there's no tomorrow. I find it unbelievable. . . . Something is wrong with the balance of the industry when the networks can be piling in money and the program suppliers are taking a bath. Right now, I guess the word is greed. It's not only continuing; it's getting worse all the time. In the next couple of years, they'll destroy everybody."

How long could producers get by absent an increased network paycheck? "It depends on how astute the networks are," said Grant Tinker, who doesn't think any independent could last any more than three years (he gives his own MTM Productions a lesser life expectancy). "Ultimately, we could get squeezed out. The industry could be reduced to two or three majors who can look to other areas to recover the loss."

Of all the majors, Universal with 13 weekly prime time hours currently scheduled, is the undisputed TV production king. But according to its new president, Frank Price, the giant, too, is cringing from the stone.

"Yes," Mr. Price acknowledged, "I believe there *has* been a spreading gap between license fees and production costs, but that's being going on for the last few years." The thing that now threatens to push Hollywood over the brink, Mr. Price said, is the increasing demand for on-location shooting. In productions such as *Harry-O* (which, Warner Bros. officials lament, is required by ABC to be filmed in San Diego despite the producers' claim that a Hollywood location would suffice), *Born Free*, *Kodiak*, *Sierra* and *Petrocelli*—all new this season—the inconvenience of working entirely apart from the studio adds at least 25% to the bottom line costs, Mr. Price noted.

"If you look at the studios in town," Mr. Price said, "there aren't many that are still all that healthy; we happen, of course, to be the glowing exception." (MCA Corp., parent of Universal, reported revenues from TV exhibitions last year at $116.6 million, compared with $31.7 million in 1972. At the same time, Columbia reported TV revenues of $33.1 million; Twentieth Century Fox claimed $27.4 million.)

"Take a look at the hits," Mr. Price suggested. "If you look at the series that went on the air last year, there were only three that could be qualified as hits that came over into this new season. They were *Kojak* [CBS], *$6 Million Man* [ABC] and *Police Story* [NBC]. That's how you figure how you are going to come out. Do you have a show that's long running, that you can syndicate?"

Apparently, several production firms didn't; hence their demise. Several years ago, Mr. Price noted, there were 27 principal TV program suppliers. Now there are 19.

Most producers agree that while the expenditure mill has been accelerated primarily by below-the-line costs in recent years, talent is providing some additional grist. The newly revised (upward) scales announced last week by the Writers Guild (see page 15) help attest to that. And, according to a spokesman for the American Federation of Television and Radio Artists, most AFTRA performance scales enjoyed a 5% increase last fall and are due for another 5% rise in November 1975. Basic fees for the services of major performers (with five lines or more), the spokesman noted, now stand at $254.50 for a one-hour show and $200.50 for a 30-minute offering. To AFTRA, it's a drop in the bucket. "The networks have been making so much money," the spokesman contended, "that the performers' salaries don't even count."

Network officials, however, take issue with such assessments, particularly as they apply the eminently more lucrative salaries commanded for performers in prime-time drama series. It is the networks, one official noted, who foot the bill for any union increase that comes to pass after the initial license contract has been signed. Ratings successes, he said, can be troublesome in that regard. "The older the show, the more increases you have to dole out," he maintained. "For a show that's been on for, say, eight years, the union costs are phenomenal."

While the networks apparently are displaying some sympathy for the producers' misfortunes, several officials were quick to add that—in their opinion—those misfortunes are often blown out of proportion. "Producers," noted one, "are just like anybody else. The guy comes in weeping about his terrible costs. . . . He weedles the highest price he can get."

And sometimes, another network executive maintained, these costs can be reflective of waste as well as necessity. "A

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dent and general counsel, ABC Inc.; Jerome Feniger, president, Horizons Communications Corp.; Leslie G. Arries Jr., vice president and general manager, WBEN-AM-FM-TV Buffalo, N.Y.; John T. Murphy, president, Avco Broadcasting; James E. Duffy, president, ABC-TV; Howard S. Meighan, president, The Catalyst Group; Sol Taishoff, chairman and editor, *Broadcasting* magazine; D. Thomas Miller, president, CBS Television Stations Division; Robert T. Howard, president, NBC-TV; Lawrence H. Rogers II, president, Taft Broadcasting; Giraud Chester, chairman National Association of Independent Television Producers and Distributors and executive vice president, Goodson-Todman Productions; Ralph M. Baruch, president, Viacom International.

Third tier—C. Edward Little, president, Mutual Broadcasting System; Vincent T. Wasilewski, president, National Association of Broadcasters; Miles David, president, Radio Advertising Bureau; James E. Conley, vice president and general manager, Meredith stations; Charles A. DeBare, president, ABC owned AM Radio Stations; Jack G. Thayer, president, NBC Radio; James M. Rupp, group vice president, Cox Broadcasting; Roy H. Park, president, Park Broadcasting; Norman Walt, president, McGraw-Hill Broadcasting; Norman R. Glenn, president, Decisions Publications; Roger D. Rice, chairman, Association of Independent Television Stations; Kevin P. O'Sullivan, president and chief executive officer, Worldvision Enterprises; Keith Lockhart, director of advertising and public relations, National Black Network.

Fourth tier—Albert Warren, editor and publisher, *Television Digest*; Lester W. Lindow, executive director, Association of Maximum Service Telecasters; Roy Danish, director, Television Information Office; M. S. Kellner, managing director, Station Representatives Association; Pierre Sutton, vice president, WLIB(AM) New York; Donald A. Pels, chairman, president, LIN Broadcasting Corp.; John Cannon, chairman, National Academy of TV Arts & Sciences; Donald H. Curran, president, Kaiser Broadcasting; David H. Foster, president, National Cable Television Association.

lot of costs are due to excess," he asserted. He noted one admittedly trivial example of a producer of his acquaintance who discovered—much to his chagrin—that somebody on his staff was running off 150 copies of working scripts, when only 30 or so were needed for production. The cost of Xerox paper, the producer quickly informed the culprit, had increased 70%. "It's the little things like that which mount up," said the network man. "Is it the networks' responsibility to finance inefficiency?"

This same source contended that there have been cases where some of the odious representations made by program suppliers in search of a higher network tab have later proved groundless. This official recalls a relationship of long standing with one producer who had made the red-ink pitch a yearly pursuit for some time. This year, the official complained, "he fully admitted that up until two years ago his business was highly profitable. . . . There's been a problem of salesmanship. What's happened here is that there's been a credulity gap. . . . The complex problem we face is trying to discern what is real and what is put on."

Contributed a third network executive: "A lot of the studios, as far as we're concerned, are being poorly managed. From a business standpoint, they're run the same as they were years ago."

Nevertheless, while the networks have been—and will continue to—demand a higher degree of corporate efficiency from their suppliers, they maintain that they can recognize that something has gone wrong with the economies of scale.

A network man accustomed to sitting at his company's end of the negotiating table related this contemporary scenario: "The guy comes in weeping about his terrible costs, how he can't stay in business unless we start paying more. We say 'well, you've still got the foreign market.' We say 'go sell it to the people in Great Britain and Australia—even though we've financed the whole thing. It's yours and God bless.' He says 'well, the foreign market isn't doing too well.' We say 'if you've got a hit, if it's been on 3-5 years, you must have about 150 negatives. Go put it in syndication. You'll make millions.' He says 'What about the access rule? We can't put reruns in prime time anymore.'"

Thus, this official says, the networks are being more accommodating than ever before. Beside the anticipated 8-10% increase in license payments, he—and several other officials—related a number of concessions in the works.

Most intriguing of these is the network assertion that more allowances are going to be made for program failures, as well as successes. In the former category, they talk of the "short rate." This involves an additional network payment to producers of programs that don't make it past the initial 13 weeks. It is given at the outset of the network-producer relationship as an incentive, to compensate for the producers' possible lack of return on his initial investment. Hypothetically, if a 30-minute program is slated to sell at \$100,000, and it flops in the initial weeks, the producer will actually receive around \$110,000 per program.

At least one network, a reliable authority reported, has elected to increase "short rate" it pays out by 25-30% for the 1975-76 season.

On the other side is the success factor. This is also injected into the contract at the outset, and assures the producer that the per-program license fee will increase by pre-set increments each year the show remains on the network. A network spokesman estimated his company will be upping this incentive by 5-7% this year.

Many observers point to the obvious economic advantage the networks enjoy over their suppliers. With 19 sellers and only three purchasers, they point out, it's clearly a buyer's market. Nevertheless, the networks appear to be headed for a season of negotiations in which the producers will emerge the short-term victor.

Why will they relent? Because, say observers on both sides of the table, nobody wants to see the independents go out of business. Economically, that would be unwise for the folks in New York because it would invite a nose-to-nose confrontation with the Goliaths of Hollywood. But, say the networks, there's an esthetic consideration as well. A larger sampling of suppliers gives the networks a more diversified program image—and avoids the gloss and schmaltz that many network officials fear would become preponderant were television production in its entirety left to the designs of the majors.

"I don't think we would be meeting our responsibilities," moralized one network man, "if we engaged in a program that constricted the source of supply. Television is a monster in the way it chews up creative material." To avoid stagnation, he stressed, "we have to somehow encourage all the young people of the world to take an interest in this business."

Thus, if the indications become reality, if the networks up their antes, if Hollywood becomes less wasteful, and if inflation is finally caged, the annual Hollywood vs. New York skirmish could result in a happy ending this year. As one network executive put it: "I'm a great believer that reality will prevail in the long run."

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